



USE FUEL TAX LAW



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USE FUEL TAX LAW

**ANALYSIS OF USE FUEL TAX LAW**

**Nature and Rate of Tax.** The use fuel tax is imposed upon the use of “fuel.” The rate of tax is eighteen cents (\$0.18) per gallon of diesel and similar fuels; six cents (\$0.06) per gallon of liquefied petroleum gas and liquid natural gas, seven cents (\$0.07) per 100 cubic feet of compressed natural gas, measured at standard pressure and temperature and nine cents (\$0.09) per gallon of ethanol and methanol containing not more than 15 percent gasoline or diesel fuels. The owner or operator of a vehicle propelled by a system using liquefied petroleum gas, liquid natural gas, or compressed natural gas may pay an annual flat rate fuel tax based on the type or weight of the vehicle instead of the above tax per gallon. (Secs. 8651, 8651.5, 8651.6, 8651.7, and 8651.8.)

Beginning July 1, 1995, the excise tax on diesel fuel will be administered under the Diesel Fuel Tax Law in Part 31 (commencing with Section 60001) which moves the collection point to the terminal rack level. The tax rate will remain the same, but the liability for the tax will be shifted to conform with federal law.

**Motor Vehicle.** “Motor vehicle” includes every self-propelled vehicle operated or suitable for operation on the highway. (Sec. 8603.)

**Highway.** “Highway” includes any road of whatever nature publicly maintained and open to the use of the public for purposes of vehicular travel. (Sec. 8605.)

**Fuel.** “Fuel” includes any combustible gas or liquid used in an internal combustion engine for the generation of power, except fuel subject to tax under the Motor Vehicle Fuel Tax Law (primarily gasoline). It includes diesel fuel, liquefied petroleum gas and natural gas. It does not include any combustible gas or liquid specifically manufactured and used for racing motor vehicles at a racetrack. (Sec. 8604.)

**Use.** “Use” in addition to the consumption of fuel to propel a motor vehicle includes placing the fuel into any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle. “Use” does not include placing the fuel into storage tanks. (Sec. 8607.)

**User.** A “user” is a person who uses fuel within the meaning of the Use Fuel Tax Law. (Sec. 8608.)

**Vendor.** A “vendor” is any person who sells fuel in this state and places or causes the fuel to be placed into the fuel tank of a motor vehicle. (Sec. 8610.)

**User Permits.** Every person desiring to become a “user” must obtain a permit from the Board and deposit the required security. The permit is valid until canceled or revoked. (Secs. 8701-8707.)

**Vendor Permits.** Every person desiring to become a “vendor” must obtain a permit from the Board and deposit the required security. The permit is valid until canceled or revoked. (Secs. 8711–8715.) A person holding a vendor’s permit and not actively engaged in business as a vendor is required to surrender the permit for cancellation. (Sec. 8716.)

**Collection of Tax by Vendor.** The vendor who sells and delivers fuel into the fuel tank of a motor vehicle must collect the tax from the user and give him a receipt therefor in the form prescribed by the Board. Fuel sold through a key lock or other unattended mechanism is presumed to be delivered into the fuel tank of a motor vehicle. The presumption is rebutted by a certificate from the user that all fuel delivered is into bulk containers. (Sec. 8732.)

The Board may authorize a political subdivision of this state holding a valid use fuel tax permit to furnish fuel as an accommodation to another political subdivision of this state under certain circumstances. (Sec. 8732.1.)

**Tax as a Debt.** The tax collected by the vendor is a debt owed by the vendor to the state. (Sec. 8733.)

**Alcohol as a Fuel.** Any alcohol produced for use in or as a fuel to propel a motor vehicle shall be taxed as fuel and not subject to taxes under the Alcoholic Beverage Tax Law.

**Exemptions.** The tax does not apply with respect to fuel used for a purpose other than the generation of power to propel a motor vehicle in this state nor to fuel used in a motor vehicle to propel:

1. Certain implements of husbandry which are exempt from registration under the Vehicle Code and are only incidentally operated upon the highway. (Sec. 8652.)

2. Certain construction equipment which is exempt from registration under the Vehicle Code and which is operated within the limits of a construction project and only incidentally operated upon the highway. (Sec. 8652.)

3. A motor vehicle off the highway. (Sec. 8653.)

4. A motor vehicle on certain U.S. Department of Agriculture highways when user pays or contributes to the cost of construction or maintenance of the highway pursuant to an agreement with or permission of the U.S. Department of Agriculture. (Sec. 8653.1.)

5. A motor vehicle operated by certain public agencies on military reservations. (Sec. 8654.)

6. A motor vehicle operated by certain public and private local bus transit operators (see Section 8655). Such operators pay a tax of one cent per gallon for fuel used in such local transit operations.

**Purchases Without Payment of Tax.** The Board may authorize the holder of a valid user’s permit to buy fuel delivered into his vehicle fuel tank without payment of tax to the vendor when the user uses the vehicle partly

out of state, or exclusively off highway, and thus would consistently over pay tax, or qualifies for the partial exemption in Section 8655. (Sec. 8732.)

**Returns and Payment.** Vendor and user returns are due on or before the 25th day of each month for the preceding month. Payment of the tax due must be made with the return. The Board may extend the time for making a return or payment of tax for one month. Interest accrues from the due date until paid. (Secs. 8751-8755.)

Failure to pay the tax or a determination within the time required will result in the imposition of a 10 percent penalty. If a return is not filed, a determination of the amount of tax due will be made and a 10 percent penalty added thereto. Interest accrues if the tax is not paid when due. The penalties imposed are limited to a maximum of 10 percent of the tax for which the return is required for any one return. (Sec. 8876.)

**Lien for Tax.** The tax, interest, and penalties are a lien on and have the effect of an execution duly levied against any vehicle in which the fuel is used and against any personal property of the user. The lien attaches at the time of the operation of the vehicle in this state. The lien for tax and interest is paramount to all private liens or encumbrances and to the rights of any conditional vendor or holder of legal title to any motor vehicle operated in this state through the use of fuel. (Secs. 8991, 8992, and 8994.)

**Certificate of Clearance.** No vehicle, except a passenger vehicle, using fuel subject to this tax may be transferred without a written tax clearance from the Board. The Board may release all or any portion of the property subject to lien if it determines that the tax, interest, and penalties are secured by a lien on other property or that the release will not jeopardize the collection of tax, interest, and penalties. (Secs. 8993, 8995, and 8997.)

**Successor Withholding and Liability.** A vendor liable for any tax, and selling the business, stock, or quitting the business, or his successor, must withhold from the purchase price enough to cover the liability until the former owner produces a receipt from the board showing that the liability was paid or that no tax is due. (9021-9024.)

**Records.** Every user and every person dealing in, transporting, or storing fuel must keep adequate records including receipts, invoices, and other pertinent papers. (Sec. 9253.)

**Disposition of Proceeds.** All money received under this law (except overpayments of certain fees) are deposited by the Board in the State Treasury to the credit of the Motor Vehicle Fuel account in the State Transportation Fund. (Sec. 9301.)

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USE FUEL TAX LAW

## USE FUEL TAX LAW

## (Part 3, Division 2, Revenue and Taxation Code \*)

Enacted Statutes 1941, Chapter 38; amended Statutes 1941, Chapter 870; Statutes 1943, Chapters 470, 703; Statutes 1945, Chapter 752; Statutes 1947, Chapter 768; Statutes First Extra Session 1947, Chapter 11; Statutes 1949, Chapter 724; Statutes 1953, Chapters 1200, 1814, 1864; Statutes 1954, Chapter 7; Statutes 1955, Chapters 4, 290, 1782; Statutes 1957, Chapters 419, 1051, 1202, 1830, 2129; Statutes of 1959, Chapters 6, 492, 790, 968, 1180, 1326, 1840; Statutes 1961, Chapters 58, 82, 451, 712; Statutes 1963, Chapters 555, 556, 1325, 1527, 1852, 2106; Statutes 1965, Chapters 27, 671, 679, 690, 747, 1920; Statutes 1966, Chapter 5; Statutes 1967, Chapters 245, 880, 881, 1682; Statutes 1968, Chapters 318, 1126, 1217, 1299; Statutes 1969, Chapters 52, 368; Statutes 1970, Chapters 555, 1509; Statutes 1971, Chapters 356, 1182, 1634; Statutes 1972, Chapter 103; Statutes 1973, Chapter 458; Statutes 1974, Chapters 544, 610, 1516; Statutes 1975, Chapters 661, 807; Statutes 1976, Chapter 776; Statutes 1977, Chapters 329, 481, 579, 921; Statutes 1978, Chapters 827, 1140; Statutes 1979, Chapters 260, 322, 373; Statutes 1980, Chapters 546, 600; Statutes 1982, Chapters 5 (First Extra Session), 1085, 1500, and 1589. Statutes 1983, Chapters 323, 1000, 1092, and 1102.

- Chapter 1. General Provisions and Definitions. §§ 8601-8621.
- 2. Imposition of Tax. §§ 8651-8657.
- 2.5. International Fuel Tax Agreement. § 8691.
- 3. Permits. §§ 8701-8716.
- 3.5. Collection of Tax by Vendor. §§ 8732-8735.
- 4. Determinations. §§ 8751-8879.
- 5. Collection of Tax. §§ 8951-9033.5.
- 6. Overpayments and Refunds. §§ 9151-9196.
- 7. Administration. §§ 9251-9278.
- 8. Distribution of Proceeds. §§ 9301-9304.
- 9. Violations. §§ 9351-9355.

## CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- § 8601. Title.
- § 8602. Construction.
- § 8603. "Motor vehicle."
- § 8604. "Fuel."
- § 8605. "Highway."
- § 8606. "Person."
- § 8607. "Use."
- § 8608. "User."
- § 8609. "In this State."
- § 8610. "Vendor."
- § 8611. "Sell."
- § 8612. "Fuel tank."
- § 8613. "Natural gas."
- § 8615. "Standard pressure and temperature."
- § 8619. "Interstate user."
- § 8620. "Qualified motor vehicle."
- § 8621. "Recreational vehicle."

**8601. Title.** This part is known and may be cited as the "Use Fuel Tax Law."

**8602. Construction.** Except where the context otherwise requires, the definitions given in this chapter govern the construction of this part.

**8603. "Motor vehicle."** As used in this part "motor vehicle" includes every self-propelled vehicle operated or suitable for operation on the highway, except a vehicle used exclusively upon stationary rails or tracks.

**History.**—Stats. 1955, p. 738, in effect September 7, 1955, added "As used in this part" and the portion beginning "and further excepting." Stats. 1961, p. 1017, in effect March 31, 1961, and p. 1074, in effect September 15, 1961, identically changed the Vehicle Code reference. Stats. 1968, p. 2296, in effect November 13, 1968, deleted exceptions for farm and construction equipment.

**Note.**—See Section 8652 exempting from tax fuel used in certain farm and construction equipment.

\* The provisions of this part, except as otherwise noted, became effective July 1, 1943.

8604. **“Fuel.”** “Fuel” includes any combustible gas or liquid, by whatever name the gas or liquid may be known or sold, of a kind used in an internal combustion engine for the generation of power to propel a motor vehicle on the highways, except fuel that is subject to the tax imposed by Part 2 (commencing with Section 7301) or Part 31 (commencing with Section 60001).

It does not include any combustible gas or liquid specifically manufactured and used for racing motor vehicles at a racetrack.

History.—Added by Stats. 1941, Ch. 38. Stats. 1985, Ch. 1023, effective January 1, 1986, substituted “of this division” for “(commencing with Section 7301)” after Part 2 in first paragraph and added second paragraph. Stats. 1994, Ch. 912, in effect September 28, 1994, but operative July 1, 1995, added “or Part 31 (commencing with Section 60001)”.

8605. **“Highway.”** “Highway” includes a way or place, of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel.

A private road is not a highway for the purposes of this part unless it has been dedicated and accepted by the proper public authorities as a public highway. The mere use of a private road by one or more members of the public, with or without the consent of the owner, does not make it a highway.

History.—Stats. 1957, p. 2286, in effect September 11, 1957, completely reworded first paragraph and added second paragraph.

8606. **“Person.”** “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, corporation, estate, trust, business trust, receiver, syndicate, this State, any county, city and county, municipality, district, or other political subdivision thereof, or any other group or combination acting as a unit.

History.—Stats. 1945, p. 1438, in effect September 15, 1945, substituted “venture” for “adventure.” Stats. 1994, Ch. 1200, in effect September 30, 1994, substituted “partnership” for “copartnership” and added “limited liability company”.

8607. **“Use.”** “Use” includes the placing of fuel into any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle unless the operator of the vehicle establishes to the satisfaction of the board that the fuel was consumed for a purpose other than the operation of a motor vehicle within this State and, with respect to fuel brought into this State in any such receptacle, the consumption of the fuel in this State. A person placing fuel in a receptacle on a motor vehicle of another who holds a valid use fuel tax permit is not deemed to have used the fuel.

History.—Stats. 1953, p. 3596, in effect September 9, 1953, added “unless the operator of the vehicle establishes to the satisfaction of the board that the fuel was consumed for a purpose other than the operation of a motor vehicle within the State.”

8608. **“User.”** (a) “User” includes any person who, within the meaning of the term “use” as defined in this chapter, uses fuel.

(b) Article 1 (commencing with Section 8701) of Chapter 3 and Article 1 (commencing with Section 8751) of Chapter 4 do not apply to (1) a user whose sole use of fuel in this state is for the propulsion of a privately operated passenger motor vehicle, a commercial vehicle with unladen weight of less than 7,000 pounds, or a privately operated two-axle truck which the user has rented or leased for a period of 30 days or less; or (2) an interstate user whose sole use of fuel in this state is for the propulsion of a motor vehicle that is not



a qualified motor vehicle and is operated in connection with an interstate trip; if the fuel used, except fuel brought into this state in the fuel tank of the vehicle, is purchased from and delivered into the fuel tank of the vehicle by a vendor.

(c) When the board determines that it is necessary for the efficient administration of this part to regard any lessor of vehicles as the agent of the lessee, with regard to the equipment leased, the board may so regard the lessor and may qualify the lessee as the user for purposes of this part.

*History.*—Stats. 1959, p. 3599, in effect September 18, 1959, added the second paragraph. Stats. 1978, Ch. 827, effective January 1, 1979, in the second paragraph added “(commencing with Section 8701)” following “Article 1” added “Article 1 (commencing with Section 8751) of Chapter” following “Chapter 3 and” deleted “nonresident” preceding “user” and deleted “while the user is temporarily within this State and while the vehicle is exempt from registration under the provisions of Chapter 4 (commencing with Section 6700) of the Vehicle Code as enacted by the Legislature at the 1959 Regular Session” following “motor vehicle”. Stats. 1982, Ch. 1085, in effect September 16, 1982, deleted “of this part” after “Chapter 4” and added “or for the propulsion of a privately operated two-axle truck . . . days or less” before “provided” in the second paragraph. Stats. 1982, Ch. 1589, in effect January 1, 1983, added “or the propulsion of a commercial vehicle . . . pounds” after “motor vehicle” in the second paragraph. Stats. 1984, Ch. 512, effective July 17, 1984, substituted “7,000” for “6,000” before “pounds.” Stats. 1985, Ch. 591, effective January 1, 1986, added the third paragraph. Stats. 1986, Ch. 510, effective January 1, 1987, reorganized the section and extended the exemption to include out-of-state tour operators who make round trips originating and terminating out-of-state. Stats. 1995, Ch. 555, in effect January 1, 1996, substituted a comma for a semicolon after “than 7,000 pounds”, substituted “an interstate user” for “a user who is an out-of-state passenger carrier whose operations within this state consist exclusively of round trip sightseeing tours originating and terminating outside this state and” after “or (2)”, and substituted “the propulsion of a . . . an interstate trip” for “propulsion of the motor vehicle operated for these purposes” after “state is for”, in subdivision (b).

8609. **“In this State.”** “In this State” or “in the State” means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

8610. **“Vendor.”** “Vendor” includes every person who sells fuel in this state and places, or causes to be placed, the fuel into any receptacle on a motor vehicle from which receptacle fuel is supplied for the propulsion of the vehicle.

“Vendor” does not include a person who places the fuel, or causes the fuel to be placed, into a receptacle on a privately operated passenger motor vehicle with respect to which the annual flat rate fuel tax described in Section 8651.7 has been paid for the current year and to which is attached the current prescribed identification emblem.

*History.*—Added by Stats. 1953, p. 3596, in effect September 9, 1953. Stats. 1982, Ch. 1589, in effect January 1, 1983, added the second paragraph.

8611. **“Sell.”** “Sell” includes any transfer of title or possession, exchange, or barter, in any manner or by any means whatsoever, for a consideration.

*History.*—Added by Stats. 1953, p. 3596, in effect September 9, 1953.

8612. **“Fuel tank.”** “Fuel tank” means any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle, exclusive of a cargo tank even though fuel is withdrawn directly therefrom for the propulsion of the vehicle.

*History.*—Added by Stats. 1957, p. 3227, in effect September 11, 1957, operative October 1, 1957.

8613. **“Natural gas.”** “Natural gas” means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

*History.*—Added by Stats. 1970, p. 2997, in effect November 23, 1970.

8615. **“Standard pressure and temperature.”** “Standard pressure and temperature” means 14.73 pounds of pressure per square inch at 60+ Fahrenheit.

**History.**—Added by Stats. 1970, p. 2997, in effect November 23, 1970.

8619. **“Interstate user.”** “Interstate user” includes any person who uses fuel in the propulsion of a motor vehicle in this state and who operates the motor vehicle within and without the state or the United States.

**History.**—Added by Stats. 1995, Ch. 555, in effect January 1, 1996.

8620. **“Qualified motor vehicle.”** “Qualified motor vehicle” means a motor vehicle that is used, designed, or maintained for transportation of persons or property, and that has two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms, has three or more axles regardless of weight, or is used in combination, when the weight of that combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle weight. “Qualified motor vehicle” does not include a recreational vehicle.

**History.**—Added by Stats. 1995, Ch. 555, in effect January 1, 1996.

8621. **“Recreational vehicle.”** “Recreational vehicle” means a vehicle such as a motor home, pickup truck with attached camper, and bus when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

**History.**—Added by Stats. 1995, Ch. 555, in effect January 1, 1996.

## CHAPTER 2. IMPOSITION OF TAX

- § 8651. Levy of tax. [Repealed.]
- § 8651. Levy of tax.
- § 8651.4. Reversion of rate upon Governor’s proclamation. [Repealed.]
- § 8651.5. Rate.
- § 8651.6. Rate; natural gas.
- § 8651.7. Flat rate.
- § 8651.8. Rate; ethanol or methanol.
- § 8652. Exemptions; agricultural and construction operations.
- § 8653. Exemptions; operations off the highway.
- § 8653.1. Exemptions; operations on United States Department of Agriculture roads.
- § 8654. Exemptions; public agency operating on military reservation.
- § 8655. Exemptions; transit district, passenger stage corporation and common carrier.
- § 8655.5. Exemptions; transfers to the Highway Users Tax Account.
- § 8656. Charter-party carrier. [Repealed.]
- § 8657. Exemptions; systems meeting emission standards. [Repealed.]
- § 8657. Alcohol used in or as fuel to propel a motor vehicle.

8651. **Levy of tax.** [Repealed by Stats. 1989, Ch. 106, operative August 1, 1990.]

8651. **Levy of tax.** (a) An excise tax is hereby imposed for the use of fuel at the following rate per gallon:

- (1) Fourteen cents (\$0.14) during 1990, on and after August 1.
- (2) Fifteen cents (\$0.15) during 1991.
- (3) Sixteen cents (\$0.16) during 1992.
- (4) Seventeen cents (\$0.17) during 1993.

(5) Eighteen cents (\$0.18) on and after January 1, 1994.

(b) If the federal fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by this section, on and after the date of the reduction, shall be increased by an amount so that the combined state and federal tax rate per gallon equals the following:

(1) Twenty-nine cents (\$0.29) during 1990, on and after August 1.

(2) Thirty cents (\$0.30) during 1991.

(3) Thirty-one cents (\$0.31) during 1992.

(4) Thirty-two cents (\$0.32) during 1993.

(5) Thirty-three cents (\$0.33) on and after January 1, 1994.

(c) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt under this section.

History.—Added by Stats. 1989, Ch. 106, in effect July 10, 1989, operative August 1, 1990, after voter approval of Senate Constitutional Amendment 1 at the June 5, 1990, direct primary election. Stats. 1990, Ch. 627, in effect September 10, 1990, substituted “on and after January 1,” for “during” in paragraph (5) of subdivision (a) and substituted “Thirty-three cents (\$0.33)” for “Thirty-four cents (\$0.34)” in paragraph (5) of subdivision (b).

**8651.4. Reversion of rate upon Governor’s proclamation.**  
[Repealed by Stats. 1981, Ch. 541, in effect September 17, 1981.]

**8651.5. Rate.** Notwithstanding the provisions of Section 8651, on or after January 1, 1966 the excise tax imposed upon liquefied petroleum gas shall be at the rate of six cents (\$0.06) for each gallon of fuel used. All references in this code to Section 8651 shall be deemed, with respect to the rate imposed upon liquefied petroleum gas on or after January 1, 1966, to also refer to this section. Neither the tax imposed by this section nor the tax imposed by Section 8651 shall apply to the use of liquefied petroleum gas in a vehicle during any period of time for which the owner or operator of the vehicle has paid the annual flat rate fuel tax as provided in Section 8651.7.

History.—Added by Stats. 1965, p. 2166, in effect June 29, 1965. Stats. 1975, Ch. 807, operative January 1, 1976, added sentence referring to Section 8651.7.

**8651.6. Rate; natural gas.** Notwithstanding the provisions of Sections 8651 and 8651.5, on or after January 1, 1971, the excise tax imposed upon natural gas shall be at the rate of seven cents (\$0.07) for each 100 cubic feet of compressed natural gas used, measured at standard pressure and temperature, and at a rate of six cents (\$0.06) for each gallon of liquid natural gas used. All references in this code to Section 8651 shall, with respect to the rate imposed upon natural gas on or after January 1, 1971, also refer to this section. Neither the tax imposed by this section nor the tax imposed by Section 8651 shall apply to the use of compressed natural gas or liquid natural gas used in a vehicle during any period of time for which the owner or operator of the vehicle has paid the annual flat rate fuel tax as provided in Section 8651.7.

History.—Added by Stats. 1970, p. 2997, in effect November 23, 1970. Stats. 1975, Ch. 807, operative January 1, 1976, added sentence referring to Section 8651.7.

**8651.7. Flat rate.** (a) The owner or operator, except an interstate user, of a vehicle propelled by a system using liquefied petroleum gas, liquid natural gas, or compressed natural gas may pay the fuel tax for the use of those fuels by paying an annual flat rate fuel tax according to the following schedule:

Unladen weight	Fee
All passenger cars and other vehicles 4,000 lbs. or less .....	\$36
More than 4,000 lbs. but less than 8,001 lbs.....	72
More than 8,000 lbs. but less than 12,001 lbs.....	120
12,001 lbs. or more .....	168

(b) The annual flat rate fuel tax described in subdivision (a) shall be an annual tax. The annual period shall be that period from the end of the month in which the tax was paid to the end of the month prior in the following calendar year. When an owner or operator elects to pay the annual flat rate fuel tax on more than one vehicle, the owner or operator may request that the board prorate the tax due on a vehicle added during the annual period, so that all vehicles have the same annual period. In the year a vehicle is added, the annual flat rate fuel tax for that vehicle shall be calculated by dividing the fee set forth in subdivision (a) by 12 and multiplying the resulting amount by the number of months remaining before the beginning of the next annual period.

(c) The board shall adopt an identification procedure for vehicles with respect to which the annual flat rate tax described in subdivision (a) of this section has been paid.

**History.**—Added by Stats. 1975, Ch. 807, operative January 1, 1976. Stats 1987, Ch. 38, in effect January 1, 1988, in paragraph (a) changed “his fuel tax” to “the fuel tax”, in paragraph (b), deleted “for a calendar year. If the annual flat rate tax is paid after the end of January of any year the amount of the tax under this section shall be reduced by one-twelfth for each month which shall have elapsed since the beginning of each year.”, and added the second sentence. Stats. 1995, Ch. 555, in effect January 1, 1996, added “, except an interstate user,” after “owner or operator” and substituted “those” for “such” after “the use of” in subdivision (a). Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added the last two sentences to subdivision (b).

**8651.8. Rate; ethanol or methanol.** (a) Notwithstanding Section 8651, the excise tax imposed upon ethanol or methanol containing not more than 15 percent gasoline or diesel fuels shall be one-half the rate prescribed by Section 8651 for each gallon of fuel used.

(b) All references in this code to Section 8651 shall be deemed, with respect to the rate imposed upon ethanol or methanol, to also refer to this section.

**History.**—Added by Stats. 1981, Ch. 950, in effect September 29, 1981. Stats. 1988, Ch. 774, in effect September 9, 1988, deleted “the provisions of” following “Notwithstanding” in subdivision (a), substituted “1994” for “1989” following “January 1,” and substituted “enacted” for “chaptered” following “which is” in subdivision (c). Stats. 1993, Ch. 875, in effect October 6, 1993, deleted subdivision (c) which stated, “This section shall remain in effect only until January 1, 1994, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1994, deletes or extends that date.”

**8652. Exemptions; agricultural and construction operations.** No tax shall be imposed upon any user with respect to that fuel which the user establishes to the satisfaction of the board is used:

(a) To propel an implement of husbandry, truck, or farm tractor used in agricultural operations off the highway and only incidentally operated upon a highway, for the purpose of moving between farms or parts of farms, which

farms or parts of farms are in close proximity, and which implement of husbandry, truck or farm tractor is exempt from registration under the Vehicle Code;

(b) To propel any construction equipment while operated within the confines and limits of a construction project and only incidentally operated upon the highway and which construction equipment is exempt from vehicle registration pursuant to the Vehicle Code; or

(c) For a purpose other than the generation of power to propel a motor vehicle in this state.

History.—Stats. 1968, p. 2297, in effect November 13, 1968, added the subparagraph letters, reworded the first sentence and (a), and added (b).

**8653. Exemptions; operations off the highway.** No tax shall be imposed upon any user with respect to that fuel which the user establishes to the satisfaction of the board is used in the operation of a motor vehicle off the highway.

History.—Added by Stats. 1943, p. 2460, in effect August 4, 1943. Stats. 1957, p. 2490, in effect September 11, 1957, substituted “off the highway” for “on private property.” Stats. 1961, p. 1952, in effect September 15, 1961, added the proviso. Stats. 1968, p. 2297, in effect November 13, 1968, reworded the section and deleted the proviso clause which imposed a one mile requirement on off-highway travel.

**8653.1. Exemptions; operations on United States Department of Agriculture roads.** No tax shall be imposed on any user with respect to fuel used in the operation of a motor vehicle on any highway which is under the jurisdiction of the United States Department of Agriculture and with respect to the use of such highway the user pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, the United States Department of Agriculture.

History.—Added by Stats. 1967, p. 4216, in effect November 8, 1967.

**8654. Exemptions; public agency operating on military reservation.** No tax shall be imposed as to any fuel used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency when operated by it over any highway constructed and maintained by the United States or any department or agency thereof within a military reservation in this State. If any such motor vehicle is operated both over such highway and over a public highway outside the military reservation in a continuous trip the tax shall be imposed only as to that portion of the fuel used to operate the vehicle over the public highway outside the military reservation.

Nothing contained in this section shall be construed as an exemption from the tax of the use of fuel in any motor vehicle operated upon a public highway within a military reservation, which highway is constructed and or maintained by this State or any political subdivision thereof.

As used in this section, “military reservation” includes any establishment of the United States Government or any agency thereof used by the armed forces of the United States for military, air, or naval operations, including research projects.

History.—Added by Stats. 1957, p. 1267, in effect September 11, 1957.

**8655. Exemptions; transit district, passenger stage corporation, and common carrier.** (a) This section shall be known and may be cited as the Mills-Hayes Act.

(b) No tax shall be imposed upon fuel used by:

(1) Any transit district, transit authority, or city owning and operating a local transit system itself or through a wholly owned nonprofit corporation.

(2) Any private entity providing transportation services for the transportation of people under contract or agreement, except general franchise agreements, with a public agency authorized to provide public transportation services, only for fuels consumed while providing services under such contracts or agreements entered into subsequent to the effective date of this act.

(3) Any passenger stage corporation subject to the jurisdiction of the Public Utilities Commission when the motor vehicles of such passenger stage corporation are exclusively operated in urban or suburban areas or between cities in close proximity for the transportation of persons for hire, compensation, or profit; provided, however, that the exemption is not extended to any line or lines operated by such passenger stage corporation which shall exceed 50 miles of one-way route mileage.

(4) Any common carrier of passengers operating exclusively on any line or lines within the limits of a single city between fixed termini or over a regular route, 98 percent of whose operations, as measured by total route mileage operated, are exclusively within the limits of a single city, and who by reason thereof is not a passenger stage corporation subject to the jurisdiction of the Public Utilities Commission.

(5) Any school district, community college district, or county superintendent of schools owning, leasing, or operating buses for the purpose of transporting pupils to and from school and for other school or college activities involving pupils, including, but not limited to, field trips and athletic contests.

(6) Any private entity providing transportation services for the purposes specified in paragraph (5) under contract or agreement with a school district, community college district, or county superintendent of schools, only for fuels consumed while providing services under those contacts or agreements entered into subsequent to the effective date of the act adding this paragraph.

(c) Notwithstanding the exemption provided for by subdivision (b), any system, corporation, or carrier using fuel exempt under the provisions of subdivision (b) shall, for the privilege of operating vehicles on state highways and freeways, make a payment equal to one cent (\$0.01) for each gallon of such exempt fuel used. The payments required by this subdivision shall be paid to the State Board of Equalization in the manner prescribed by the board, and such payments shall be treated as a tax for all purposes of this part.



(d) The exemption provided for in subdivision (b) and the payments provided for in subdivision (c) shall not be applicable to fuel used by a charter-party carrier of passengers. The term "charter-party carrier of passengers" has the same meaning as that specified in Section 5360 of the Public Utilities Code and shall further include those transportation services described in subdivisions (a) and (e) of Section 5353 of the Public Utilities Code, if such transportation service is rendered as contract carriage and not as common carriage of passengers.

(e) There are in the State of California many local bus transit operators in need of financial assistance from sources other than the local property tax. These operators are performing essential public transit service as a vital counterpart of the streets and highways. It is the purpose of this section to provide relief from the payment of use fuel tax for local transit operators and it is the intent of the Legislature that the funds accruing to such operators shall be used for the improvement of their transit operations and to aid in providing better transit service to and from places of employment.

There are also in the State of California many private entities providing public transportation services for the transportation of people in vehicles other than buses under contract or agreement with local government, transit districts or local bus transit operators. It is the purpose of this section to provide relief from the payment of use fuel taxes for diesel fuel for those private entities only for fuel consumed while providing these services.

**History.**—Added by Stats. 1968, p. 690, in effect June 19, 1968, operative July 1, 1968. Stats. 1971, p. 714, in effect March 4, 1972, substitutes "contract carriage and not as common carriage of passengers" for "charter-party carrier of passengers" in last sentence of (d). Stats. 1973, Ch. 458, effective September 11, 1973, deleted the language "as defined in section 9651.5 of this code." from part (b)(2) and inserted in its place the language commencing with "or between cities . . . ." Stats. 1978, Ch. 1140, operative January 1, 1979, in subdivision (b) renumbered (2) and (3) and added new (2). Stats. 1982, Ch. 1500, in effect September 28, 1982, added "for the transportation of people" before "under" in subsection (2) of subdivision (b) and added the second paragraph in subdivision (e). Stats. 1984, Ch. 1663, effective September 30, 1984, operative October 1, 1984, added (b)(5) and (b)(6) and all text therein.

**Note.**—Stats. 1971, p. 715, provides that the amendment to Section 8655 of the Revenue and Taxation Code, effective March 4, 1972, does not constitute a change in, but is declaratory of, existing law.

**Note.**—Sec. 3 of Stats. 1984, Ch. 1663, effective September 30, 1984, operative October 1, 1984, provided the Legislature finds and declares that there presently is uncertainty in the application of diesel fuel taxes with respect to school districts and community college districts which this act is intended to clarify.

For the public purpose of assuring equity in the payment of diesel fuel taxes among school districts and community college districts, the Legislature, in enacting this act, intends to clarify existing law and to affect all applicable pending proceedings which come within the provisions of paragraph (5) of subdivision (b) of Section 8655 of the Revenue and Taxation Code, as follows:

(a) Notwithstanding Section 8782 of the Revenue and Taxation Code, for reporting periods prior to July 1, 1984, the notice of determination to a school district, community college district, or county superintendent of schools shall be given within three years after the last day of the month following the period for which the return was due. Any unpaid liability determined for periods beyond a three-year statute of limitations is hereby canceled.

(b) No interest pursuant to Sections 8803 or 8876, or penalties imposed pursuant to Section 8801, 8804, or 8876, of the Revenue and Taxation Code shall apply to unpaid tax liabilities for any periods prior to July 1, 1984.

(c) With respect to unpaid tax liabilities determined for the period between July 1, 1981, and July 1, 1984, pursuant to Section 8801 or 8876, the taxes may, at the option of the taxpayer, be paid over a period of up to 10 years. No penalties shall be assessed so long as the installment payments are made timely, but interest on the unpaid balance shall be paid as prescribed by Section 8876 of the Revenue and Taxation Code.

(d) If the State Board of Equalization finds that the failure to make a timely payment pursuant to subdivision (c) is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred, notwithstanding the exercise of ordinary care and the absence of willful neglect, the taxpayer may be relieved of the penalty.

**Note.**—Stats. 1986, Ch. 216, effective June 30, 1986 amended Section 3 of Stats. 1984, Ch. 1663 to reference Section 8876 for interest, and Sections 8801, 8804 or 8876 related to penalties. It also replaced “tax liabilities” for “determinations issued” in (b) and “unpaid tax liabilities determined” for “determinations issued” in (c).

**8655.5. Exemptions; transfers to the Highway Users Tax Account.** (a) Commencing with the 1984-85 fiscal year, the Controller shall annually transfer from the General Fund to the Highway Users Tax Account in the Transportation Tax Fund, the amount, as determined by the State Board of Equalization, necessary to fully reimburse the account for any revenue loss caused by the exemptions provided by paragraphs (5) and (6) of subdivision (b) of Section 8655.

(b) In addition, the Controller shall transfer, on January 1, 1985, the sum of four hundred thirty-five thousand dollars (\$435,000) from the General Fund to the account to fully reimburse the account for the revenue loss caused by Section 3 of the act enacting this section.

**History.**—Added by Stats. 1984, Ch. 1663, effective September 30, 1984, operative October 1, 1984.

**Note.**—See note following Section 8655.

**8656. Charter-party carrier.** [Repealed by Stats. 1986, Ch. 308, effective January 1, 1987.]

**8657. Exemptions; systems meeting emission standards.** [Expired December 31, 1975, Stats. 1970, p. 2997. Repealed by Stats. 1979, Ch. 373, effective January 1, 1980.]

**8657. Alcohol used in or as fuel to propel a motor vehicle.** (a) Notwithstanding any provision of the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code) any alcohol produced for use in or as a fuel to propel a motor vehicle shall be taxed as fuel under this part and shall not be subject to taxes under the Alcoholic Beverage Tax Law (Part 14 (commencing with Section 32001)).

(b) The state requirements for determining whether alcohol is produced for use in or as a fuel to propel a motor vehicle and not for use as an alcoholic beverage shall be the same as the requirements of the Bureau of Alcohol, Tobacco and Firearms of the United States Department of Treasury under federal law.

**History.**—Added by Stats. 1980, Ch. 228, effective June 25, 1980. Stats. 1982, Ch. 1589, in effect January 1, 1983, renumbered “Section 7360” as “Section 8657,” substituted “fuel to propel a motor vehicle” for “motor vehicle fuel” before “shall be” in subdivision (a) and before “and not” in subdivision (b), and deleted “motor vehicle” after “taxed as” in subdivision (a).

## CHAPTER 2.5. INTERNATIONAL FUEL TAX AGREEMENT \*

**8691. Authority.** Effective on and after January 1, 1996, Chapter 2 (commencing with Section 9405) of Part 3.5 shall apply to all interstate users.

\* Added by Stats. 1995, Ch. 555, in effect January 1, 1996.



## CHAPTER 3. PERMITS

- Article 1. User. §§ 8701-8708.  
2. Vendor. §§ 8711-8716.

## Article 1. User

- § 8701. To whom issued.  
§ 8702. Applications.  
§ 8703. Issuance of permit.  
§ 8704. Revocation of permit; notice.  
§ 8705. Operation after cancellation or revocation.  
§ 8706. Impoundment of vehicles.  
§ 8707. Reinstatement; fee; refund.  
§ 8708. Issuance of California fuel trip permit.

**8701. To whom issued.** Every person desiring to become a user of fuel within this state shall secure a use fuel tax permit.

*History.—Stats. 1983, Ch. 1000, in effect January 1, 1984, added “(a)” before “Every” in the first sentence, and added subdivision (b). Stats. 1984, Ch. 512, effective July 17, 1984, subdivision (c) operative only until December 31, 1984, deleted “first” before “secure” in (a), substituted “without a currently valid” for “not acquired . . . with a” before “use fuel tax” in (b), added (c) and (d) and all text therein. Stats. 1995, Ch. 555, in effect January 1, 1996, deleted subdivision letter “(a)” and deleted subdivisions (b), (c), and (d) which provided a \$500 penalty for using fuel without a use fuel permit.*

**8702. Applications.** Applications for permits shall be made to the board upon forms prescribed by the board.

**8703. Issuance of permit.** On receipt of an application and after the deposit of such security as the board may require pursuant to Section 8951, the board shall issue to the applicant a use fuel tax permit authorizing the applicant to become a user of fuel taxable under this part. The permit is valid until canceled or revoked.

*History.—Stats. 1943, p. 2002, in effect August 4, 1943, added “canceled or.” Stats. 1984, Ch. 193, effective January 1, 1985, deleted “of this code” after “Section 8951.”*

**8704. Revocation of permit; notice.** Whenever any user fails to comply with any provision of this part or any rule or regulation of the board prescribed and adopted under this part, the board upon hearing, after giving the user at least 10 days’ notice in writing specifying the time and place of hearing and requiring him to show cause why his permit should not be revoked, may revoke the permit held by him. The notice may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

*History.—Stats. 1945, p. 1438, in effect September 15, 1945, added “at least” before “10 days’.” Stats. 1955, p. 3288, in effect September 7, 1955, deleted provision respecting issuance of a new permit after revocation.*

**8705. Operation after cancellation or revocation.** It is unlawful for any person whose permit has been canceled or revoked to operate as a user of fuel in this State until he has fully complied with the provisions of this part and has been issued a new permit or his permit has been reinstated.

*History.—Stats. 1943, p. 2002, in effect August 4, 1943, added “cancelled or.” Stats. 1955, p. 3289, added “or his permit has been reinstated.”*

**8706. Impoundment of vehicles.** The board or its authorized representatives may impound the vehicles of a user whose permit has been revoked and who continues to use fuel after having been duly notified by the board of the revocation. The board or its representatives may retain possession of the vehicles until the user fully complies with the provisions of this part and all costs incurred in connection with the impounding or storage of the vehicles have been paid.

*History.—Added by Stats. 1955, p. 3289, in effect September 7, 1955.*

**8707. Reinstatement; fee; refund.** Subsequent to the revocation of the permit of a user the board shall reinstate the permit when the user pays the amount of excise tax determined, together with interest and penalties, fully complies with the provisions of this part, and pays a fee of fifty dollars (\$50) to the board for reinstatement. The fee shall not be subject to refund except as provided in Section 9151.

*History.—Added by Stats. 1955, p. 3289, in effect September 7, 1955. Stats. 1959, p. 2426, in effect September 18, 1959, substituted "ten" for "five" dollars and added the last sentence. Stats. 1966, p. 188, in effect April 18, 1966, operative July 1, 1966, substituted "fifteen" for "ten" dollars. Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted "fifty dollars (\$50)" for "fifteen dollars (\$15)" following "pays a fee of."*

**8708. Issuance of California fuel trip permit.** The board or its authorized representative may issue a California fuel trip permit to interstate users for entry into this state. The California fuel trip permit shall be valid for four consecutive days and includes any reentry into the state during the four-day period. The fee for issuance of a California fuel trip permit is thirty dollars (\$30). Other provisions of this article and Article 1 (commencing with Section 8751) of Chapter 4 do not apply to the holder of a California fuel trip permit who uses only fuel brought into this state in the fuel tank of a qualified motor vehicle and fuel purchased from, and delivered into the fuel tank of the qualified motor vehicle by, a vendor. Any use fuel tax paid to a vendor for fuel taken out of the state in the fuel tank of a qualified motor vehicle operated under a California fuel trip permit shall not be refunded to the holder of the permit, notwithstanding any other provisions of this part.

The board may enter into an interagency agreement with the Department of Motor Vehicles providing for the issuance of California fuel trip permits by that department.

*History.—Added by Stats. 1983, Ch. 1000, in effect January 1, 1984. Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "a qualified motor" for "the" after "fuel tank of" in the third sentence of, and added "qualified motor" after "tank of the" and after "tank of a" in the third sentence and fourth sentence, respectively, of, the first paragraph; and substituted "an interstate" for "a" after "trip permit for" and added "qualified motor" after "board to bring" in the first sentence of, and added "use fuel trip" after "file of all" in the second sentence of, the second paragraph. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted "or its authorized representative . . . interstate users and" for "may authorize the issuance of use fuel trip permits to" after "The board" in the first sentence and substituted "California" for "use" before "fuel trip permit" throughout the section. Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "for entry into this state" for "and holders of trip permits issued under Section 4004 of the Vehicle Code" after "to interstate users" in the first sentence and substituted "four consecutive days . . . four-day period" for "the same period as the trip permit issued under Section 4004 of the Vehicle Code" after "be valid for" in the second sentence of the first paragraph, and deleted "The board may deny the issuance of more than one California fuel trip permit for an interstate user of fuel determined by the board to bring qualified motor vehicles into this state on a regular, ongoing basis. The board shall maintain a file of all California fuel trip permits issued under this section for the purpose of determining the effectiveness of the program and the appropriateness of the fee." in the second paragraph.*

## Article 2. Vendor

- § 8711. To whom issued.
- § 8712. Applications.
- § 8713. Issuance of permit.
- § 8714. Revocation or suspension; notice; reissuance.
- § 8715. Operation after suspension.
- § 8716. Notification; cease operations; transfers.

**8711. To whom issued.** Every person desiring to become a vendor shall first secure a vendor use fuel tax permit.

*History.—Added by Stats. 1953, p. 3597, in effect September 9, 1953.*

**8712. Applications.** Applications for permits shall be made to the board upon forms prescribed by the board.

*History.—Added by Stats. 1953, p. 3597, in effect September 9, 1953.*

**8713. Issuance of permit.** On receipt of an application the board shall issue to the applicant a vendor use fuel tax permit authorizing him to become a vendor of fuel taxable under this part. The permit is valid until canceled, suspended, or revoked.

*History.—Added by Stats. 1953, p. 3597, in effect September 9, 1953.*

**8714. Revocation or suspension; notice; reissuance.** Whenever any vendor fails to comply with any provision of this part or any rule or regulation of the board prescribed and adopted under this part, relating to fuel vendors, the board upon hearing, after giving the vendor at least 10 days' notice in writing specifying the time and place of hearing and requiring the vendor to show cause why his or her permit should not be revoked, may revoke or suspend the permit held by the vendor. The board shall give to the person written notice of the suspension or revocation of his or her permit. The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The board shall not issue a new permit to a vendor whose permit has been revoked or reinstate the permit of a vendor whose permit has been suspended or revoked unless it is satisfied that he or she will comply with the provisions of this part and the rules and regulations of the board, and the vendor pays to the board a fee of fifty dollars (\$50) for the reinstatement or issuance of a permit. The fee shall not be subject to refund except as provided in Section 9151.

*History.—Added by Stats. 1953, p. 3597, in effect September 9, 1953. Stats. 1959, p. 2427, in effect September 18, 1959, added "or reinstate the permit of a vendor whose permit has been suspended or revoked", reworded the next to last sentence and added the last. Stats. 1966, p. 1881, in effect April 18, 1966, operative July 1, 1966, substituted "fifteen" for "ten" dollars. Stats. 1990, Ch. 1528, in effect January 1, 1991, substituted "the vendor" for "him" after "requiring", added "or her" after "his", substituted "the vendor" for "him" after "permit held by", in first sentence; added "or her" after "him" in the second sentence; and added "or she" after "him" and substituted "fifty dollars (\$50)" for "fifteen dollars (\$15)" in the fourth sentence.*

**8715. Operation after suspension.** It is unlawful for any person to operate as a vendor of fuel in this State without a permit or after a permit has been suspended or revoked.

*History.—Added by Stats. 1953, p. 3597, in effect September 9, 1953. Stats. 1957, p. 3227, in effect September 11, 1957, operative October 1, 1957, added "or revoked."*

**8716. Notification; cease operations; transfers.** (a) A permit shall be held only by persons actively engaging in or conducting a business as a

vendor of fuel taxable under this part. Any person not so engaged shall forthwith surrender his or her permit to the board for cancellation. The board may revoke the permit of a person found to be not actively engaged in or conducting a business as a vendor of fuel taxable under this part.

(b) If the permit holder who transfers a business does not notify the board of the transfer, or deliver the permit to the board for cancellation, and the transferee, with the permit holder's actual or constructive knowledge, uses the permit in any way, the transferor shall be liable for taxes under this part, interest computed as specified in Section 8777, and those penalties imposed pursuant to subdivision (c).

(c) The transferor shall be liable for penalties incurred by the transferee under Sections 8779, 8876, and 9352, but shall not be liable for penalties incurred by the transferee under Sections 8780 and 9353. However, the board may, at its discretion, relieve the transferor from liability for penalties incurred by the transferee.

**History.**—Added by Stats. 1989, Ch. 768, in effect January 1, 1990.

### CHAPTER 3.5. COLLECTION OF TAX BY VENDOR

#### Article 1. Collection of Tax by Vendor.

#### Article 1. Collection of Tax by Vendor \*

- § 8732. Collection by vendor; receipt.
- § 8732.1. Transfers between political subdivisions.
- § 8732.5. Credit for bad debt losses.
- § 8733. Tax as debt.
- § 8734. Copies of receipts to be submitted.
- § 8735. Applicability of other provisions.

**8732. Collection by vendor; receipt.** A vendor of fuel the use of which is taxable under this part, who sells and delivers such fuel into a fuel tank shall, at the time of sale, collect the tax from the user and give to the user a receipt therefor in the manner and form prescribed by the board.

When fuel is sold through a keylock mechanism or other unattended mechanism it shall be presumed that the vendor delivered the fuel into the fuel tank of a motor vehicle and the vendor must collect the tax from the user. This presumption shall be rebutted and the vendor shall not collect the tax if the user certifies in writing to the vendor that all fuel delivered to him through a specific keylock mechanism or other unattended mechanism will be delivered into bulk containers.

Vendors of fuel required by this section to collect tax from users shall not be required to make such collections on sales and deliveries to users who are authorized by the board, as hereinafter provided, to purchase fuel without payment of tax to a vendor.

\* Stats. 1991, Ch. 770, in effect January 1, 1992, added "Article 1. Collection of Tax by Vendor." immediately preceding Section 8732.

The board may issue written authorization to a holder of a valid use fuel permit to purchase fuel from a vendor designated by the user without payment of the tax to the vendor when the board finds (1) that the user consistently is using the fuel in vehicles which are operated partly without this state or off the highways of this state, or the user qualifies for the exemption provided in Section 8655, and (2) that to require collection of the tax from the user by the vendor would cause consistently recurring overpayments of the tax, and (3) that the revenue of the state with respect to the tax liability of such user is adequately secured. Such authorization may be revoked when any such condition no longer obtains.

*History.*—Added by Stats. 1953, p. 3598, in effect September 9, 1953. Stats. 1957, p. 3227, in effect September 11, 1957, operative October 1, 1957, completely rewrote this section which previously had required collection of tax by vendor from unlicensed users with vehicles registered out of state. Stats. 1963, p. 4383, in effect September 20, 1963, added the second and third paragraphs. Stats. 1970, p. 1076, in effect November 23, 1970, added “or the user qualifies for the exemption provided in Section 8655” in (1) of third paragraph. Stats. 1979, Ch. 260, effective July 17, 1979, added second paragraph.

**8732.1. Transfers between political subdivisions.** Without requiring the issuance of a vendor use fuel tax permit, the board may issue written authorization to a political subdivision of this state which holds a valid user use fuel tax permit to furnish fuel as an accommodation to another political subdivision of this state which holds a valid user use fuel tax permit if the board finds that the political subdivision furnishing the fuel agrees to report and pay all taxes applicable to the fuel it furnishes and each political subdivision agrees to keep such records and file such reports as the board deems necessary to insure that all applicable taxes shall be paid.

For the purposes of this section “political subdivision of this state” means any governmental organization formed and operating under the authority of the laws of this state and includes counties, cities, cities and counties, school districts, fire protection districts, irrigation districts, and recreation districts.

*History.*—Added by Stats. 1976, Ch. 776, in effect January 1, 1977.

**8732.5. Credit for bad debt losses.** A vendor is relieved from liability to collect use fuel tax which became due and payable subsequent to July 1, 1958, insofar as the sales of the fuel are represented by accounts which have been found worthless and charged off for income tax purposes. If the vendor has previously paid the amount of the tax, he may, under rules and regulations prescribed by the board, take a credit in such amount. If any such accounts are thereafter in whole or in part collected by the vendor, the gallons of fuel represented by the amounts collected shall be included in the first return filed after such collection and the amount of the tax thereon paid with the return. The board may, at its option, require the seller to submit periodical reports listing accounts delinquent for a 90-day period or over.

*History.*—Added by Stats. 1958, p. 8, in effect June 29, 1958. Stats. 1959, p. 3263, in effect September 18, 1959, rewrote the section so as to eliminate a requirement that the credit be taken in the report filed for the period in which the debt was found to be worthless.

**8733. Tax as debt.** The tax required to be collected by the vendor constitutes a debt owed by the vendor to this State.

*History.*—Added by Stats. 1953, p. 3598, in effect September 9, 1953.

**8734. Copies of receipts to be submitted.** The board may require vendors to submit at such times as it shall designate copies of the receipts given pursuant to Section 8732.

*History.—Added by Stats. 1953, p. 3598, in effect September 9, 1953.*

**8735. Applicability of other provisions.** The provisions of Chapters 4 to 9, inclusive, of this part shall apply to any vendor in the same manner as such provisions apply to any user.

*History.—Added by Stats. 1953, p. 3598, in effect September 9, 1953.*

#### CHAPTER 4. DETERMINATIONS

- Article 1. Returns and Payments. §§ 8751–8755.
  - 1.1. Payment by Electronic Funds Transfer. §§ 8760–8763.
  - 2. Deficiency Determinations. §§ 8776–8783.
  - 3. Determinations If No Return Made. §§ 8801–8805.
  - 4. Jeopardy Determinations. §§ 8826–8829.
  - 5. Redeterminations. §§ 8851–8855.
  - 6. Interest and Penalties. §§ 8876–8879.

##### Article 1. Returns and Payments

- § 8751. Due date of tax.
- § 8751.5. Credit for tax paid to vendor.
- § 8752. Filing monthly returns.
- § 8753. Remittances.
- § 8754. Extension of time for filing.
- § 8755. Return periods.

**8751. Due date of tax.** The excise tax imposed by this part is due and payable quarterly on or before the last day of the calendar month next succeeding each quarterly period in which a taxable use of fuel occurs.

*History.—Stats. 1953, p. 3653, in effect September 9, 1953, substituted “twenty-fifth” for “fifteenth” day. Stats. 1967, p. 1380, operative December 1, 1967, substituted “last” for “twenty-fifth” day. Stats. 1983, Ch. 323, in effect July 21, 1983, operative August 1, 1983, substituted “15th” for “last” before “day”. Stats. 1983, Ch. 1102, in effect September 27, 1983, operative November 1, 1983, substituted “25th” for “15th” before “day.” Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “quarterly on or . . . each quarterly period” for “monthly on or before the 25th day of the month following each calendar month” after “due and payable”.*

**8751.5. Credit for tax paid to vendor.** If any user has paid the tax to a vendor who is the holder of a valid vendor’s permit issued under this part, he shall be allowed a credit against the amount of tax due under Section 8751 with respect to that fuel on which the tax was paid to the vendor.

*History.—Added by Stats. 1957, p. 3228, in effect September 11, 1957, operative October 1, 1957.*

**8752. Filing monthly returns.** (a) Except as provided in subdivision (b), on or before the last day of the calendar month following each quarterly period every user shall, except as otherwise provided in Section 8608, file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the amount of any tax due and any other information as the board may require to carry out the purposes of this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) This section shall not be applicable to any user whose sole use of fuel subject to the tax imposed by this part is for the propulsion of a privately operated passenger automobile, provided that the fuel used in this state, except fuel brought into this state in the fuel tank of the vehicle, is purchased from and delivered into the fuel tank of the vehicle by a vendor holding a permit issued under this part.

**History.**—Stats. 1953, p. 3654, in effect September 9, 1953, substituted “twenty-fifth” for “fifteenth” day. Stats. 1961, p. 1522, in effect September 15, 1961, added the exclusion relating to a user of fuel for the propulsion of a privately operated passenger vehicle. Stats. 1963, p. 1436, in effect September 20, 1963, amended this section by substituting “return” for “report,” and adding “the amount of any tax due.” Stats. 1967, p. 1380, operative December 1, 1967, substituted “last” for “25th” day. Stats. 1983, Ch. 1102, in effect September 27, 1983, operative November 1, 1983, substituted “25th” for “last” before “day.” Stats. 1984, Ch. 1707, effective January 1, 1985, added “except as . . . Section 8608” after “user shall.” Stats. 1992, Ch. 889, in effect January 1, 1993, added “(a) Except as provided in subdivision (b),” before “on or before,” deleted “fuel used during the preceding calendar month by the user in this state, the amount of,” after “showing the amount of,” deleted comma after “tax due” after “amount of any,” substituted “any” for “such” after “tax due and,” substituted a period for “, except that the provisions of” after “of this part” in subdivision (a) and added subdivision letter “(b).” Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “on or before . . . each quarterly period” for “or before the 25th day of each month” after “in subdivision (b),” in subdivision (a). Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, substituted “with” for “on forms prescribed by” after “Section 8608, file” in, and added “in the form . . . electronic media” to, the first sentence of, and added the second sentence to, subdivision (a).

**8753. Remittances.** The user shall accompany each return with a remittance payable to the board for the amount of tax due.

**History.**—Stats. 1963, p. 1436, in effect September 20, 1963, amended this section by substituting “return” for “report.”

**8754. Extension of time for filing.** The board for good cause may extend for not to exceed one month the time for making any return or paying any tax required under this part. The extension may be granted at any time; provided, a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any user to whom an extension is granted shall pay, in addition to the tax, interest at the modified adjusted annual rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax would have been due without the extension to the date of payment.

**History.**—Stats. 1945, p. 1438, in effect September 15, 1945, added second sentence to first paragraph and substituted interest rate of one-half of 1 percent per month, or fraction thereof, for 6 percent per annum. Stats. 1953, p. 3598, in effect September 9, 1953, substituted “30” for “15” days in first sentence and added punctuation in second sentence. Stats. 1963, p. 1436, in effect September 20, 1963, substituted “one month” for “30 days,” and substituted “return” for “report.” Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from” in the second paragraph. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . thereof” for “adjusted annual rate” before “established,” substituted “Section 6591.5” for “Section 19269.”

**8755. Return periods.** The board, if it deems it necessary in order to ensure payment of the tax imposed by this part, or to facilitate the administration of this part, may require returns and payment of the tax to be made for designated periods other than quarterly periods. On or before the last day of the calendar month following each designated period, a return for the preceding designated period shall be filed with the board in any form as the board may prescribe.

**History.**—Added by Stats. 1957, p. 2490, in effect September 11, 1957. Stats. 1963, p. 1436, in effect September 20, 1963, substituted “returns” for “reports.” Stats. 1986, Ch. 308, effective January 1, 1987, specified that returns are to be filed on or before the 25th day following the last day of each designated period. Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “quarterly” for “monthly” after “periods other than” in the first sentence; and substituted “last day of the calendar month following” for “25th day following the last day of” after “or before the” and substituted “any” for “such” after “the board in” in the second sentence.



Article 1.1. Prepayments [Repealed.] \*

- § 8756. Application of article. [Repealed.]
- § 8756.1. Prepayment. [Repealed.]
- § 8756.2. Prepayment form; when due. [Repealed.]
- § 8756.3. Credit for prepayment. [Repealed.]
- § 8756.4. Determination of estimated measure of tax liability. [Repealed.]
- § 8756.5. Penalty for late prepayment. [Repealed.]
- § 8756.6. Penalty for failure to make a timely prepayment but return and payment timely. [Repealed.]
- § 8756.7. Penalty in case of negligence or intentional disregard. [Repealed.]
- § 8756.8. Notification. [Repealed.]

Article 1.1. Payment by Electronic Funds Transfer \*

- § 8760. Electronic funds transfer payments.
- § 8761. Relief of penalty.
- § 8762. Definitions.
- § 8763. Electronic filing.

**8760. Electronic funds transfer payments.** (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 8751). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 8776) or Article 3 (commencing with Section 8801), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or

\* Article 1.1 was added by Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001.



fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 8876.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, deleted the former last sentence of subdivision (b) which provided "The election shall be operative for a minimum of one year."

**8761. Relief of penalty.** If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 8760. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

**8762. Definitions.** (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) "Automated clearinghouse" means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) "Automated clearinghouse debit" means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person's bank account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state's bank account and debiting his or her own bank

account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Section 8760 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

**8763. Electronic filing.** (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

*History.—Added by Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003.*

## Article 2. Deficiency Determinations

- § 8776. Power of board in determinations.
- § 8777. Interest on determinations.
- § 8778. Offset.
- § 8779. Penalty in case of negligence.
- § 8780. Penalty in case of fraud.
- § 8781. Service of notice.
- § 8782. Time within which notice must be given.
- § 8782.1. Limitation; deficiency determination; decedent.
- § 8783. Waiver.

**8776. Power of board in determinations.** If the board is dissatisfied with the return filed, it may compute and determine the amount to be paid upon the basis of any information available to it. One or more deficiency determinations may be made of the amount of tax due for one or for more than one month. When a business is discontinued a determination may be made at any time thereafter, within the periods specified in Section 8782, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

*History.—Stats. 1957, p. 3770, in effect September 11, 1957, added third sentence. Stats. 1963, p. 1436, in effect September 20, 1963, substituted “return” for “report.”*

**8777. Interest on determinations.** The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the calendar month following the reporting period for which the amount of the tax, or any portion thereof, should have been reported until the date of payment.

*History.*—Stats. 1954, p. 113, in effect April 20, 1954, substituted “twenty-fifth” for “fifteenth” day. Stats. 1967, p. 1380, operative December 1, 1967, substituted “last day of the month following” for “twenty-fifth day after the close of” the month. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from.” Stats. 1983, Ch. 1102, in effect September 27, 1983, operative November 1, 1983, substituted “25th” for “last” before “day.” Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . thereof” for “adjusted annual rate” before “established,” substituted “Section 6591.5” for “Section 19269.” Stats. 1995, Ch. 555, in effect January 1, 1996, deleted “annual” after “the modified adjusted” and substituted “last day of the calendar month following the reporting period” for “25th day of the month following the month” after “6591.5, from the”.

**8778. Offset.** In making a determination the board may offset overpayments for a month or months against underpayments for another month or months and against the interest and penalties on the underpayments.

**8779. Penalty in case of negligence.** If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of this part or the rules and regulations adopted under this part, a penalty of 10 percent of the amount of the determination shall be added thereto.

*History.*—Stats. 1957, p. 3770, in effect September 11, 1957, substituted a penalty of “10” for “25” percent.

**8780. Penalty in case of fraud.** If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade this part or the rules and regulations adopted under this part, a penalty of 25 percent of the amount of the determination shall be added thereto.

*History.*—Stats. 1957, p. 3770, in effect September 11, 1957, substituted a penalty of “25” for “50” percent.

**8781. Service of notice.** The board shall give the user written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the user at his address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

*History.*—Stats. 1957, p. 3770, in effect September 11, 1957, added the provision that the service was complete upon mailing. Stats. 1974, Ch. 610, effective January 1, 1974, revised and expanded the section and deleted the reference to section 1013 of the C.C.P.

**8782. Time within which notice must be given.** Except in the case of fraud, intent to evade the tax, or failure to make a return, every notice of a deficiency determination shall be given within three years after the last day

of the calendar month following the period for which the return was due or within three years after the return is filed, whichever period expires later. If the user fails to make a return, the notice of determination shall be mailed within eight years after the last day of the month following the period for which the return was due.

*History.*—Stats. 1953, p. 3598, in effect September 9, 1953, added alternative of three years after the report is filed, if later, Stats. 1957, p. 3771, in effect September 11, 1957, added second sentence. Stats. 1963, p. 1437, in effect September 20, 1963, substituted “return” for “report” in both sentences. Stats. 1969, p. 894, in effect November 10, 1969, substituted “the last day of the month following the month for which the return was due” for “the date when the amount should have been reported” and “the date the return was due”. Stats. 1978, Ch. 827, effective January 1, 1979, in the first and second sentences substituted “period” for “month” following “day of the”. Stats. 1979, Ch. 260, effective July 17, 1979, in the first and second sentences, substituted “month” for “period” following “day of the” and substituted “period” for “month” following “following the”. Stats. 1983, Ch. 1102, in effect September 27, 1983, operative November 1, 1983, substituted “25th” for “last” before “day” in the first sentence. Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “last day of the calendar” for “25th day of the” after “years after the” and deleted “the” after “whichever period expires” in the first sentence.

**8782.1. Limitation; deficiency determination; decedent.** In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

*History.*—Added by Stats. 1968, p. 2449, in effect November 13, 1968.

**8783. Waiver.** If before the expiration of the time prescribed in Section 8782 for the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

*History.*—Added by Stats. 1957, p. 3771, in effect September 11, 1957.

### Article 3. Determinations If No Return Made

- § 8801. Determination; failure to make return; penalty.
- § 8802. Offset.
- § 8803. Interest.
- § 8804. Penalties.
- § 8805. Notice of determination.

**8801. Determination; failure to make return; penalty.** If any user fails to make a return, the board shall make an estimate of the amount of fuel used by the user which is subject to the tax. The estimate shall be made for the month or months in respect to which the user failed to make a return and shall be based upon any information available to the board. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the State, adding to the sum thus fixed a penalty equal to 10 percent thereof. One or more determinations may be made for one or for more than one month.

*History.*—Stats. 1954, p. 114, in effect April 20, 1954, substituted a penalty of “10” for “25” percent. Stats. 1963, p. 1437, in effect September 20, 1963, substituted “return” for “report.”

**8802. Offset.** In making a determination the board may offset overpayments for a month or months against underpayments for another month or months and against interest and penalties on the underpayments.

**8803. Interest.** The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the calendar month following the reporting period for which the amount, or any portion thereof, should have been reported until the date of payment.

*History.*—Stats. 1954, p. 114, in effect April 20, 1954, substituted “twenty-fifth” for “fifteenth” day. Stats. 1967, p. 1380, operative December 1, 1967, substituted “last day of the month following” for “twenty-fifth day after the close of” the month. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from.” Stats. 1983, Ch. 1102, in effect September 27, 1983, operative November 1, 1983, substituted “25th” for “last” before “day.” Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . thereof” for “adjusted annual rate,” substituted “Section 6591.5” for “Section 19269.” Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “last day of the calendar month following the reporting period” for “25th day of the month following the month” after “6591.5, from the”.

**8804. Penalties.** If the failure of a user to file a return is due to fraud or an intent to evade the tax, a penalty of 25 percent of the amount required to be paid by the user, exclusive of penalties, shall be added thereto in addition to the 10-percent penalty provided in Section 8801.

*History.*—Stats. 1954, p. 114, in effect April 20, 1954, substituted a penalty of “10” for “25” percent. Stats. 1957, p. 3771, in effect September 11, 1957, substituted a penalty of “25” for “50” percent. Stats. 1963, p. 1437, in effect September 20, 1963, substituted “return” for “report.”

**8805. Notice of determination.** Promptly after making its determination the board shall give to the user written notice of its estimate and determination, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

#### Article 4. Jeopardy Determinations

- § 8826. Jeopardy determinations.
- § 8827. Interest and penalty.
- § 8828. Petition for redetermination; security.
- § 8828.5. Administrative hearing.
- § 8829. Service of notice.

**8826. Jeopardy determinations.** If the board believes that the collection of any amount of excise tax imposed under this part will be jeopardized by delay, it shall thereupon make a determination of the amount of tax, noting that fact upon the determination. The amount determined is immediately due and payable.

**8827. Interest and penalty.** If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid within 10 days after service upon the user of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within the 10 days, and the delinquency penalty and interest provided in Article 6 of this chapter shall attach to the amount specified.

**8828. Petition for redetermination; security.** The user against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to Article 5 of this chapter. He shall, however, file the petition for redetermination with the board within 10 days after the service upon him of notice of the determination. The user shall at the time of filing the petition for redetermination deposit with the board such security as it may

deem necessary to insure compliance with this part. The security may be sold by the board in the manner prescribed by Section 8951.

*History.—Stats. 1945, p. 1438, in effect September 15, 1945, substituted “at the time of filing the petition for redetermination” for “also within the 10-day period.”*

**8828.5. Administrative hearing.** In accordance with such rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administration hearing for one or more of the following purposes:

- (a) To establish that the determination is excessive; or
- (b) To establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person; or
- (c) To request the release of all or a part of the property to the person; or
- (d) To request a stay of collection activities.

The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. No security need be posted to file the application and to obtain this hearing. However, if the person does not deposit within the 10-day period prescribed in Section 8828, such security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect provisions of Section 8827 relating to the finality date of the determination or to penalty or interest.

*History.—Added by Stats. 1977, Ch. 329, operative January 1, 1978.*

**8829. Service of notice.** Any notice required by this article may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

*History.—Added by Stats. 1965, p. 4441, in effect September 17, 1965.*

## Article 5. Redeterminations

- § 8851. Petition for redetermination.
- § 8851.5. Form and content.
- § 8852. Oral hearing.
- § 8852.5. Decrease or increase of determination.
- § 8853. Decision; final date.
- § 8854. Due date of determination; penalty.
- § 8855. Service of notice.

**8851. Petition for redetermination.** Any user against whom a determination is made under Article 2 (commencing with Section 8776) or 3 (commencing with Section 8801) may petition for a redetermination within

30 days after service upon the user of notice thereof. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

*History.*—Stats. 1957, p. 3771, in effect September 11, 1957, substituted “30” for “15” days. Stats. 1984, Ch. 193, added “(commencing with Section 8776)” after “Article 2,” added “(commencing with Section 8801)” after “or 3,” deleted “of this chapter” before “may petition.”

**8851.5. Form and content.** Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

*History.*—Added by Stats. 1967, p. 2328, in effect November 8, 1967.

**8852. Oral hearing.** If a petition for redetermination is filed within the 30-day period, the board shall reconsider the determination and, if the user has so requested in his petition, shall grant him an oral hearing and shall give him 10 days’ notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

*History.*—Stats. 1957, p. 3771, in effect September 11, 1957, substituted “30” for “15” day period.

**8852.5. Decrease or increase of determination.** The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the penalty imposed by Section 8780 or Section 8804 applies to the amount of the determination as originally made or as increased, the claim for increase must be asserted within eight years after the last day of the month following the month for which the return for the period for which the increase is asserted was due or within eight years after the return was filed, whichever period expires the later.

*History.*—Added by Stats. 1957, p. 3771, in effect September 11, 1957. Stats. 1969, p. 894, in effect November 10, 1969, added the second sentence.

**8853. Decision; final date.** The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

*History.*—Stats. 1957, p. 3771, in effect September 11, 1957, substituted “30” for “15” days.

**8854. Due date of determination; penalty.** All determinations made by the board under Articles 2 or 3 of this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

*History.*—Stats. 1954, p. 114, in effect April 20, 1954, substituted a penalty of “10” for “25” percent.

**8855. Service of notice.** Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.



## Article 6. Interest and Penalties

- § 8876. Interest and penalties.
- § 8877. Reasonable cause for delay; relief.
- § 8878. Relief from interest; disaster.
- § 8878.5. Relief of interest.
- § 8879. Penalty interest rates. [Repealed.]
- § 8879. Reasonable reliance on written advice; relief of tax, penalty, and interest.

**8876. Interest and penalties.** (a) Any user who fails to pay any tax, except taxes determined by the board under Article 2 (commencing with Section 8776) or Article 3 (commencing with Section 8801), within the time required shall pay a penalty of 10 percent of the amount of the tax, together with interest on that tax at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable until the date of payment.

(b) Any user who fails to file a return in accordance with the due date set forth in Section 8751 or the due date established by the board in accordance with Section 8755, shall pay a penalty of 10 percent of the amount of the tax with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the tax for which the return is required for any one return.

*History.*—Stats. 1953, p. 3598, in effect September 9, 1953, substituted penalty of “10” for “25” percent. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “(commencing . . . 8801)” for “or 3” after “Article 2” and “adjusted . . . 19269” for “rate . . . thereof” before “from.” Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . thereof” for “adjusted annual rate” before “established”, substituted “Section 6591.5” for “Section 19269.” Stats. 1995, Ch. 555, in effect January 1, 1996, deleted “of this chapter” after “with Section 8801”) and substituted “or fifty dollars . . . on that tax” for “, in addition to the tax, plus interest” after “of the tax”. Stats. 1996, Ch. 1087, in effect January 1, 1997, deleted “or fifty dollars (\$50), whichever is greater” after “amount of the tax”. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added subdivision letter designation (a) before the former sole paragraph, and added subdivisions (b) and (c).

**8877. Reasonable cause for delay; relief.** (a) If the board finds that a person’s failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 8760, 8801, 8854, and 8876.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

*History.*—Added by Stats. 1963, p. 2846, in effect September 20, 1963. Stats. 1983, Ch. 1102, in effect September 27, 1983, added “8756.5,” after “8801” in the first paragraph. Stats. 1984, Ch. 512, effective July 17, 1984, operative July 1, 1985, added “secure a . . . permit or to” after “person’s failure to,” added “8701” after “Sections” near the end of first paragraph, changed “he” to “he or she” and “his” to “his or her” in second paragraph. Stats. 1989, Ch. 768, in effect January 1, 1990, added “8854,” after “8801,” in the first paragraph. Stats. 1999, Ch. 941 (SB 1231), in effect January 1, 2000, deleted “secure a use fuel tax permit or to” after “person’s failure to” and deleted “8701, 8756.5” after “provided by Sections” in the first paragraph. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision letter designation (a) before first paragraph, added “8760,” after “provided by Sections” in subdivision (a); added subdivision letter designation (b) before second paragraph, added “Except as provided in subdivision (c), any” in the first sentence of subdivision (b); and added subdivision (c).



**8878. Relief from interest; disaster.** If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 8754, 8760, 8803, and 8876.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 1981, Ch. 947, in effect January 1, 1982. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, substituted "8760, 8803" for "8803" after "provided by Sections" in the first paragraph, and added "or she" after "upon which he" and added "or her" after "bases his" in the second paragraph. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, added "8754" after "interest provided by Sections" in the first paragraph.

**8878.5. Relief of interest.** (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted "this part" for "Sections 8803 and 8876" after "imposed on a person by" in subdivision (a).

**8879. Penalty interest rates.** [Repealed by Stats. 1985, Ch. 20, effective March 29, 1985, operative July 1, 1985.]

**8879. Reasonable reliance on written advice; relief of tax, penalty, and interest.** (a) If the board finds that a person's failure to make a timely return or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest thereto.

(b) For purposes of this section, a person's failure to make a timely return or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

## CHAPTER 5. COLLECTION OF TAX

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|------------|--------------------------------------|-----------------|
| Article 1. | Security for Tax.                    | §§ 8951-8958.   |
| 2.         | Suit for Tax.                        | §§ 8971-8973.   |
| 3.         | Lien of Tax.                         | §§ 8991-8996.   |
| 3.5.       | Warrant for Collection of Tax.       | §§ 9001-9003.   |
| 4.         | Seizure and Sale.                    | §§ 9011-9014.   |
| 4.5.       | Successor Withholding and Liability. | §§ 9021-9024.   |
| 5.         | Miscellaneous Provisions.            | §§ 9031-9033.5. |

### Article 1. Security for Tax

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|---------|---|
| § 8951. | Security.   |
| § 8952. | Notice of delinquency to creditors, etc.                        |
| § 8953. | Non-transferability after notice.                               |
| § 8954. | Advise board; effective notice.                                 |
| § 8955. | Liability for transfer.   |
| § 8956. | Effect of security for tax when business discontinued.          |
| § 8957. | Notice; credits held by person other than taxpayer. [Repealed.] |
| § 8957. | Notice of levy.   |
| § 8958. | Employer withheld earnings.                                     |

**8951. Security.** The board, whenever it deems it necessary to ensure compliance with this part or any rule or regulation adopted under this part, may require any user or vendor to deposit with it any security that it may determine. Any security in the form of cash, government bonds, or insured deposits in banks and savings and loan institutions shall be held by the board in trust to be used solely in the manner provided for by this section and Section 8956. The board may sell the security at public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the manner prescribed for service of notice of a deficiency determination. Upon any sale, any surplus above the amount due shall be returned to the person who deposited the security.

History.—Stats. 1945, p. 1439, in effect September 15, 1945, added fourth sentence. Stats. 1990, Ch. 1528, in effect January 1, 1991, substituted “ensure” for “insure” before “compliance”, and added “or vendor” after “user”, in the first sentence. Stats. 1991, Ch. 770, in effect January 1, 1992, added “or wholesaler” after “vendor” in the first sentence; added the second sentence. Stats. 1994, Ch. 903, in effect January 1, 1995, substituted “any” for “such” after “deposit with it” and substituted “that” for “as” after “it any security” in the first sentence; added “by” after “manner provided for” in the second sentence; deleted “so to do” after “becomes necessary” in the third sentence; and deleted “Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price thereof.” as the fifth sentence. Stats. 1994, Ch. 912, in effect September 28, 1994 but operative July 1, 1995, deleted “, or wholesaler” after “user or vendor” in the first sentence.

**8952. Notice of delinquency to creditors, etc.** If any user is delinquent in the payment of any obligation imposed under this part, or in the event a determination has been made against such a user which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the user, or owing any debts to the user. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the State Controller.

History.—Stats. 1963, p. 1434, in effect September 20, 1963, completely revised this section. Stats. 1971, p. 3528, operative on and after January 1, 1972, applicable only with respect to certificates of lien or abstracts of judgment filed on or after that date. Substitutes “10 years after last recording” for “3 years after last recording”. Stats. 1977, Ch. 481, operative July 1, 1978, deleted “of a certificate” and substituted “or filing of a notice of state tax lien”. Stats. 1978, Ch. 827, effective January 1, 1979, substituted “first-class” for “registered”. Stats. 1980, Ch. 600, operative January 1, 1981, substituted “Section 7171 of the Government Code” for “Section 8996”.

**8953. Non-transferability after notice.** After receiving the notice the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires the earlier.

History.—Added by Stats. 1963, p. 1434, in effect September 20, 1963.

**8954. Advise board; effective notice.** All persons so notified shall forthwith after receipt of the notice advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall state the amount, interest and penalty due from the person and shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall be effective with respect to an amount not in excess of two times the amount, interest and penalty due from the person.

History.—Added by Stats. 1963, p. 1434, in effect September 20, 1963. Stats. 1972, Ch. 103, operative March 7, 1973, added “shall state the amount, interest and penalty due from the person and”, and added the third sentence.

**8955. Liability for transfer.** If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, he shall be liable to the State for any indebtedness due under this part from the person with respect to whose obligation the notice was given if solely by reason of such transfer or disposition the State is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

History.—Added by Stats. 1963, p. 1434, in effect September 20, 1963.

**8956. Effect of security for tax when business discontinued.** If, at the time a person ceases to be a user or vendor under this part, the board holds security pursuant to Section 8951 in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions, the security when applied to the account of the taxpayer shall be deemed to be a payment on account of any liability of the taxpayer to the board on the date the person ceases to be a user or vendor under this part.

History.—Added by Stats. 1967, p. 2327, in effect November 8, 1967. Stats. 1991, Ch. 770, in effect January 1, 1992, added "or wholesaler" after "vendor". Stats. 1994, Ch. 912, in effect September 28, 1994, but operative July 1, 1995, substituted "user or vendor" for "user, vendor, or wholesaler" after "to be a", and substituted "the" for "such" after "loan institutions,".

**8957. Notice; credits held by person other than taxpayer.**  
[Repealed by Stats. 1986, Ch. 1361, effective January 1, 1987.]

*Text of section operative through June 30, 2001*

**8957. Notice of levy.** (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a user, vendor, or other person liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that user, vendor, or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at those times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term “payments” does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term “payments” does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the user, vendor, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the user, vendor, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1986, Ch. 1361, effective January 1, 1987. Stats. 1991, Ch. 770, in effect January 1, 1992, added “wholesaler” after “vendor” in subdivision (a), paragraph (2) of subdivision (c), and paragraph (2) and (3) of subdivision (d). Stats. 1994, Ch. 912, in effect September 28, 1994, but operative July 1, 1995, deleted “or wholesaler,” after “to the user, vendor,” in subdivisions (a), (c)(2), (d)(2), and (d)(3), and substituted “those” for “such” after “to the board at” in subdivision (a). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted “payments, credits other than payments,” for “credits” after “their control, any” in the first sentence and added “The notice of . . . in subdivision (b).” as the second sentence in subdivision (a); substituted “sum of both . . . of the levy” for “amount of each payment due or becoming due to the user, vendor, or other person liable during the period” after “(2) The” in subdivision (c); and added “or” after “residual, patent rights,” in subparagraph (1) of subdivision (d).

### *Text of section operative July 1, 2001*

**8957. Notice of levy.** (a) Subject to the limitations in subdivisions (b) and (c), the board may by notice of levy, served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a user, vendor, or other person liable for any amount under this part to withhold from those credits or other personal property the amount of any tax, interest, or penalties due from that user, vendor, or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at those times as it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the user, vendor, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the user, vendor, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

*History.*—Added by Stats. 1986, Ch. 1361, effective January 1, 1987. Stats. 1991, Ch. 770, in effect January 1, 1992, added "wholesaler" after "vendor" in subdivision (a), paragraph (2) of subdivision (c), and paragraph (2) and (3) of subdivision (d). Stats. 1994, Ch. 912, in effect September 28, 1994, but operative July 1, 1995, deleted "or wholesaler," after "to the user, vendor," in subdivisions (a), (c)(2), (d)(2), and (d)(3), and substituted "those" for "such" after "to the board at" in subdivision (a). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits other than payments," for "credits" after "their control, any" in the first sentence and added "The notice of . . . in subdivision (b)." as the second sentence in subdivision (a); substituted "sum of both . . . of the levy" for "amount of each payment due or becoming due to the user, vendor, or other person liable during the period" after "(2) The" in subdivision (c); and added "or" after "residual, patent rights," in subparagraph (1) of subdivision (d). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted "paragraph (29) of subdivision (a) of Section 9102" for "Section 9105" after "as defined in" in subdivision (d).

**8958. Employer withheld earnings.** (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a user or other person liable for any amount under this part that the person's employer withheld earnings for tax as pursuant to Section 8957 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the



board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer, and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

History.—Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

## Article 2. Suit for Tax

- § 8971. Court action.
- § 8972. Attachment.
- § 8973. Prima facie evidence.

**8971. Court action.** At any time within three years after any tax or any amount of tax required to be collected becomes due and payable and at any time within three years after the delinquency of any tax or any amount of tax required to be collected, or within the period during which a lien is in force as the result of the filing of a notice of state tax lien under Section 7171 of the Government Code, the board may bring an action in the courts of this state, of any other state, or of the United States in the name of the state to collect the amount delinquent together with penalties and interest.

History.—Stats. 1980, Ch. 546, operative January 1, 1981, completely reworded. Previously provided for referral of delinquency to Attorney General. Stats. 1981, Ch. 947, in effect January 1, 1982, added "of the Government Code" after "Section 7171" in the first sentence.

The Board's Interpretation of "Due and Payable" under Revenue and Taxation Code Sections 8971 and 60421 is Correct.—Cool Fuel, Inc., a licensed fuel wholesaler, was investigated by the Board and found liable for over \$2.5 million for unpaid monthly use fuel taxes for diesel fuel sold in 1993. Cool Fuel requested a re-determination and a hearing before the Board, but before the Board issued a final determination, Cool Fuel filed for chapter 11 bankruptcy protection.

The Board filed a proof of claim in the bankruptcy case for \$2,606,570 in disputed taxes and interest. Cool Fuel objected to the Board's claim on the basis that it was barred by the three-year statute of limitations provided by Revenue and Taxation Code Sections 8971 and 60421. The Board argued that Revenue and Taxation Code Sections 8854 and 60355 define "due and payable" under Sections 8971 and 60421 as upon a final determination. Consequently, the Sections 8971 and 60421 time limitation period had not yet even begun and the Board's claim was not time barred. The Ninth Circuit held that the Board's interpretation was correct. Therefore, the amount of tax due pursuant to a Board determination is "due and payable" when the determination becomes final. *Cool Fuel Inc. vs. Board of Equalization* (In re Cool Fuel, Inc.) (2000) 210 F.3d 999. Subsequently, the Board's claim was dismissed on summary judgment. On appeal, the Ninth Circuit reversed and remanded with instructions to enter judgment in favor of the Board. In re Cool Fueling. (2004) 117 Fed. Appx. 514, unpublished. On appeal, the Bankruptcy Appeal Panel affirmed. BAP No. CC-05-1121-KPaB, June 21, 2006.

**8972. Attachment.** In the action a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

**History.**—Stats. 1974, Ch. 1516, effective January 1, 1975, deleted the statement that no bond or affidavit was required previous to the issuing of the attachment, and added the proviso that the writ of attachment may be issued in the described manner.

**8973. Prima facie evidence.** In the action a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the tax of the delinquency of the amount of tax, interest, and penalty set forth, and of compliance by the board with all provisions of this part in relation to the computation and levy of the tax.

### Article 3. Lien of Tax

- § 8991. Lien.
- § 8992. Time of attachment.
- § 8993. Removal of lien.
- § 8994. Priority.
- § 8995. Certificate of clearance; transfer of ownership.
- § 8996. Recording certificate; lien. [Repealed.]
- § 8996. Liens: perfection and enforceability of.
- § 8997. Release of lien. [Repealed.]
- § 8997.5. Unenforceable lien. [Repealed.]

**8991. Lien.** Notwithstanding the provisions of Section 8996, the excise tax, interest, and penalties are a lien upon and have the effect of an execution duly levied against any motor vehicle in which fuel taxable under this part is used and against any personal property of the user.

**History.**—Stats. 1957, p. 3771, in effect September 11, 1957, added "and against any other personal property of the user." Stats. 1959, p. 2804, in effect September 18, 1959, deleted "other" before "personal property." Stats. 1977, Ch. 481, operative July 1, 1978, added "Notwithstanding the provisions of Section 8996,".

**Vehicle subject to lien.**—Where the board and Controller seized a truck claiming a lien thereon for use fuel taxes accrued in connection with the seized truck and three other trucks operated by the tax debtor, the provision that "any motor vehicle in which fuel taxable under this part is used" means that each vehicle of a user in which taxable fuel was used was subject to a lien for all the fuel tax liability of the user and not merely that incurred through the particular vehicle. *Hillmert v. State Board of Equalization*, (1963) 218 Cal.App.2d 578.

**8992. Time of attachment.** The lien arising under Section 8991 attaches at the time a vehicle is operated in this state through the use of fuel taxable under this part.

**History.**—Stats. 1957, p. 3772, in effect September 11, 1957, substituted "a" for "the" before "vehicle," deleted "the" before "fuel," and added "taxable under this part." Stats. 1977, Ch. 481, operative July 1, 1978, added "arising under Section 8991" following "lien".

**8993. Removal of lien.** The lien arising under Section 8991 shall not be removed until the excise tax, interest, and penalties are paid or the vehicle or other property subject to the lien is sold in payment thereof.

**History.**—Stats. 1957, p. 3772, in effect September 11, 1957, added "or other property." Stats. 1977, Ch. 481, operative July 1, 1978, added "arising under Section 8991" following "lien".



**8994. Priority.** The lien arising under Section 8991 as to the tax and interest, but exclusive of penalties, upon personal property is paramount to all private liens or encumbrances of whatever character, and to the rights of any conditional vendor or any other holder of the legal title, in or to any motor vehicle which is operated in this state through the use of fuel taxable under this part.

**History.**—Stats. 1957, p. 3772, in effect September 11, 1957, deleted “such” before “motor” and added the last clause. Stats. 1959, p. 2804, in effect September 18, 1959, added “as to the tax and interest, but exclusive of penalties, upon personal property.” Stats. 1977, Ch. 481, operative July 1, 1978, added “arising under Section 8991” following “lien”.

**Constitutionality.**—The provision making use fuel tax liens paramount to all private liens or encumbrances on a vehicle and to the rights of any conditional vendor or holder of legal title in or to a vehicle is not unconstitutional. *Hillmert v. State Board of Equalization*, (1963) 218 Cal.App.2d 578.

**8995. Certificate of clearance; transfer of ownership.** The Department of Motor Vehicles may transfer the registered ownership of any motor vehicle using fuel taxable under this part only after a certificate of excise tax clearance has been issued by the board. The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board.

An excise tax clearance certificate shall not be required to transfer the registered ownership of a passenger vehicle as defined in Section 465 of the Vehicle Code.

**History.**—Stats. 1945, p. 1439, in effect September 15, 1945, added “according to the records of the board as of the date of the certificate.” Stats. 1979, Ch. 260, effective July 17, 1979, added second paragraph.

**Failure to acquire clearance.**—Where the State Board of Equalization and Controller seized a truck for the tax debts of a prior owner and where the subsequent owner purchased the truck knowing that it had been operated in California by the prior owner, that such operation may have resulted in unpaid use fuel taxes, that there may have been a lien upon the truck, and where the subsequent owner inquired of the prior owner and a representative of the vendor of the truck to the subsequent owner concerning taxes due the State of California, but did not inquire of the State Board of Equalization or take any other action to determine whether the truck was subject to the lien for taxes, the truck was subject to the lien for the taxes of the prior owner. *Hillmert v. State Board of Equalization*, (1963) 218 Cal.App.2d 578. Stats.

**8996. Recording certificate; lien.** [Repealed by Stats. 1977, Ch. 481, operative July 1, 1978.]

**8996. Liens; perfection and enforceability of.** (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. Such a lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board;

(3) For amounts determined under Section 8826 (pertaining to jeopardy assessments), the date the notice of the board’s finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

History.—Added by Stats. 1977, Ch. 481, operative July 1, 1978. Stats. 1979, Ch. 322, effective January 1, 1980, changed wording of second paragraph of (a), deleted reference to judgment creditors following second sentence of (f), changed “January 1, 1978” to “July 1, 1978” in (g). Stats. 1980, Ch. 600, operative January 1, 1981, deleted part of first sentence in (a) following “lien”; substituted present second sentence for former second sentence; renumbered second paragraph of (a) to become (b); deleted former (b), (c), (d), (e), (f), (g).

**8997. Release of lien.** [Repealed by Stats. 1980, Ch. 600, operative January 1, 1981.]

**8997.5. Unenforceable lien.** [Repealed by Stats. 1980, Ch. 600, operative January 1, 1981.]

#### Article 3.5. Warrant for Collection of Tax

- § 9001. Warrant; time of issuing.
- § 9002. Fees and expenses.
- § 9003. Collection of fees.

**9001. Warrant; time of issuing.** At any time within three years after any person is delinquent in the payment of any amount herein required to be paid or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution.

History.—Added by Stats. 1955, p. 3289, in effect September 7, 1955. Stats. 1965, p. 2071, in effect September 17, 1965, added “or within 10 years after the last recording of a certificate under Section 8996” in the first sentence. Stats. 1977, Ch. 481, operative July 1, 1978, substituted “or filing of a notice of state tax lien” in place of “of a certificate”. Stats. 1980, Ch. 600, operative January 1, 1981, substituted “Section 7171 of the Government Code” for “Section 8996”. Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to any sheriff” in the second sentence.

**9002. Fees and expenses.** The board may pay or advance to the sheriff or marshal, the same fees, commissions, and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Added by Stats. 1955, p. 3289, in effect September 7, 1955. Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal or constable” after “to the sheriff” and added “or her” after “expenses for his” in the first sentence.

**9003. Collection of fees.** The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him by virtue of the warrant or in any other manner provided in this part for the collection of the tax.

History.—Added by Stats. 1955, p. 3289, in effect September 7, 1955.

#### Article 4. Seizure and Sale

- § 9011. Seizure and sale; authority of board.
- § 9012. Notice of sale; contents; publication.
- § 9012.5. Seizure for private sale.
- § 9012.6. Notice of private sale.
- § 9013. Conduct of sale.
- § 9014. Disposition of proceeds.

**9011. Seizure and sale; authority of board.** Whenever any user is delinquent in the payment of the obligations imposed under this part, the board or its authorized representative may collect the amount due in the following manner: The board may seize any property, real or personal, subject to the lien of the tax and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

*History.*—Stats. 1957, p. 3772, in effect September 11, 1957, reworded the language following the colon so as to apply to any property and not merely to a motor vehicle as formerly.

**9012. Notice of sale; contents; publication.** Notice of the sale and the time and place thereof shall be given in writing to the delinquent user and to all persons who have an interest of record in the property seized at least 20 days before the date set for the sale. The notice shall be personally served or enclosed in an envelope addressed to the user or other person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including tax, penalties, interest, and costs, the name of the user, and the further statement that unless the amount is paid on or before the time fixed in the notice of sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

*History.*—Stats. 1957, p. 3773, in effect September 11, 1957, substituted “property” for “motor vehicle” in the first and second sentences, and for “vehicle” in the fourth sentence. Stats. 1990, Ch. 1528, in effect January 1, 1991, substituted “who have an interest” for “appearing”, deleted “to have an interest”, and substituted “20” for “10” in the first sentence; added “personally served or”, “or other person”, and “or her”, in the second sentence; substituted “If not personally served the notice” for “and in the case of any person appearing of record to have an interest in the property seized, addressed to the person at his last known residence or place of business in this State” in the third sentence; deleted “also” after “notice shall”, and substituted “pursuant to Section 6063 of the Government Code,” for “for at least 10 days before the date set for sale”, substituted “city” for “county” after “published in the” in the fourth sentence; substituted “or a part thereof is situated in any part thereof is situated in a city or, if not, in a” for “seized is to be sold. If there is no” combining the fourth and fifth sentences into the fourth sentence; added “published” after “circulation”, and substituted “in which the property or a part thereof is located” to the combined portion of the former sentences four and five; added “Notice shall also be posted in both of the following manners:” as the fifth sentence; added subdivisions (a) and (b) in front of the former last sentence creating a new paragraph; added “, or so much of it as may be necessary,” before “will be sold” in the last paragraph.

**9012.5. Seizure for private sale.** The board may seize any motor vehicle subject to the lien of the tax and thereafter sell the vehicle at private sale to pay the tax due, together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

*History.*—Added by Stats. 1957, p. 3773, in effect September 11, 1957.

**9012.6. Notice of private sale.** Notice of the sale shall be given in writing to the delinquent user and to all persons appearing of record to have an interest in the motor vehicle at least 10 days before the date set for the sale of the vehicle. The notice shall be enclosed in an envelope addressed to the user at his last known residence or place of business and, in the case of any person appearing of record to have an interest in the motor vehicle, addressed to the person at his last known residence or place of business. It shall be deposited in the United States mail, postage prepaid. The notice shall contain a description of the motor vehicle to be sold, a statement of the amount due, interest, penalties and costs, the name of the user, and the further statement that unless the tax due, interest, penalties and costs are paid within 10 days the motor vehicle will be sold at private sale.

*History.—Added by Stats. 1957, p. 3773, in effect September 11, 1957.*

**9013. Conduct of sale.** At any sale the board or its authorized agent shall sell the property in accordance with the law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the user.

*History.—Stats. 1957, p. 3773, in effect September 11, 1957, substituted “any” for “the” after “at,” “property” for “vehicle,” and “for the personal property and a deed for any real property sold” for “which vests title in the purchaser” in first sentence, and added the second and third sentences.*

**9014. Disposition of proceeds.** If upon any sale the moneys received exceed the amount due to the state from the user, the board shall return the excess to the user and obtain his or her receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest or lien, the board shall withhold payment of any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the user is not available, the board shall deposit the excess moneys with the Controller, as trustee for the user, subject to the order of the user, his or her heirs, successors, or assigns.

*History.—Stats. 1957, p. 3774, in effect September 11, 1957, substituted “any” for “the” following “if upon” in first sentence and “property” for “motor vehicle” in second sentence. Stats. 1996, Ch. 860, in effect January 1, 1997, substituted “state” for “State” after “due to the” and added “or her” after “and obtain his” in the first sentence, added “or her” after “notice of his” in the second sentence, and substituted “Controller” for “State Treasurer” after “moneys with the” and added “or her” after “the user, his” in the last sentence.*

#### Article 4.5. Successor Withholding and Liability \*

- § 9021. Successor withholding.
- § 9022. Successor liability; certificate of tax clearance.
- § 9023. Certificate of tax clearance.
- § 9024. Notice of successor liability.

**9021. Successor withholding.** If any vendor liable for any amount under this part sells out his or her business or stock of goods or quits the business, his or her successor or assigns shall withhold from the purchase price an amount sufficient to cover that amount until the former owner

\* Article 4.5 was added by Stats. 1986, Ch. 1361, effective January 1, 1987.

produces a receipt from the board showing that it has been paid or a certificate stating that no amount is due.

History.—Stats. 1991, Ch. 770, in effect January 1, 1992, added “or wholesaler” after “vendor” in the first sentence. Stats. 1994, Ch. 912, in effect September 28, 1994, but operative July 1, 1995, deleted “or wholesaler” after “If any vendor”.

**9022. Successor liability; certificate of tax clearance.** (a) If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price valued in money.

(b) (1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice to the purchaser at his or her address as it appears on the records of the board of the amount that must be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date of the sale of the business or stock of goods.

(C) The date the former owner’s records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) shall release the purchaser from any further obligation to withhold from the purchase price under this article. The last date upon which the obligation of the successor may be enforced shall be not later than three years after the date the board is notified of the purchase of the business or stock of goods.

History.—Stats. 1991, Ch. 236, in effect July 29, 1991, added “from the” after “withhold” in the first sentence of subdivision (c); substituted “last date upon” for “time within” after “The”, substituted “be not later. . . purchase of the” for “begin to run at the time the person sells out his or her”, and deleted “or at the time that the determination against the person becomes final, whichever event occurs the later” after “of goods” in the second sentence of subdivision (c).

**9023. Certificate of tax clearance.** The certificate may be issued after the payment of all amounts due under this part, according to the records of the board as of the date of the certificate, or after the payment of the amounts is secured to the satisfaction of the board.

**9024. Notice of successor liability.** The obligation of the successor shall be enforced by serving a notice of successor liability on the person. The notice shall be served in the manner prescribed for service of a notice of a deficiency determination, not later than three years after the date the board is notified of the purchase of the business or stock of goods. The successor may petition for reconsideration in the manner provided in Article 5 (commencing with Section 8851) of Chapter 4. The notice shall become final and the amount due and payable in the manner provided in that article except that no additional penalty shall apply if not paid when due and payable. This chapter, with respect to the collection of any amount required to be paid under this part, shall apply when the notice becomes final.

History.—Stats. 1990, Ch. 74, in effect January 1, 1991 added “, not later than . . . stock of goods.” to the second sentence.

Article 5. Miscellaneous Provisions

- § 9031. Cumulative remedies.
- § 9032. Furnishing of partnership agreement.
- § 9033. Installment payment agreement.
- § 9033.5. Installment payment annual statement.

**9031. Cumulative remedies.** The remedies of the State provided for in this chapter are cumulative, and no action taken by the board constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

**9032. Furnishing of partnership agreement.** The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

*History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.*

**9033. Installment payment agreement.** (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 8854.

*History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision (e).*

**9033.5. Installment payment annual statement.** The board, beginning no later than January 1, 2001, shall provide each taxpayer who has



an installment payment agreement in effect under Section 9033 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

**History.**—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

## CHAPTER 6. OVERPAYMENTS AND REFUNDS

- Article 1. Claim for Refund. §§ 9151–9157.
- 2. Suit for Refund. §§ 9171–9175.
- 2.5. Recovery of Erroneous Refunds. §§ 9181–9183.
- 3. Cancellations. § 9196.

### Article 1. Claim for Refund

- § 9151. Overpayments; credits and refunds.
- § 9151.5. Excess tax reimbursement.
- § 9152. Claims; limitation period.
- § 9152.1. Claim limitation; financially disabled.
- § 9152.2. Overpayments from levies or liens.
- § 9153. Claims; form and content.
- § 9154. Credit for overpayments not exceeding fifty thousand dollars. [Repealed.]
- § 9155. Interest on overpayment.
- § 9156. Intentional or careless overpayment.
- § 9157. Systems meeting emission standards. [Repealed.]

**9151. Overpayments; credits and refunds.** If the board determines that any amount not required to be paid under this part has been paid by any person, the board shall set forth that fact in its records and certify the amount paid in excess of the amount legally due and the person by whom the excess was paid to the board or from whom it was collected. The excess amount paid or collected shall be credited on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall either be refunded to the person, or his or her successors, administrators, executors, or assigns, or, if authorized by the board, deducted by the person from any amounts to become due from him or her under this part.

Any overpayment of the tax by a user to a vendor who is required to collect the tax and who gives the user a receipt therefor pursuant to Section 8732 shall be credited or refunded by the state to the user.

For any amount exceeding fifty thousand dollars (\$50,000), the board's proposed determination under this section shall be available as a public record for at least 10 days prior to the effective date of the determination.

**History.**—Stats. 1943, p. 2002, in effect August 4, 1943, added provision authorizing credit of overpayments against amounts due under Part 2 of Division 2 of the code. Stats. 1945, p. 1439, in effect September 15, 1945, deleted this provision and added "the excess was." Stats. 1953, p. 3598, effective September 9, 1953, added "or from whom it was collected" at end of first sentence, added "amount paid or collected" after "excess" in second sentence and added the present third paragraph. Stats. 1957, p. 3774, in effect September 11, 1957, added second paragraph. Stats. 1957, p. 3228, approved by the Governor prior to p. 3774, would also have amended this section. Stats. 1959, p. 4378, in effect September 18, 1959, substituted "one-hundred" for "twenty-five" dollars. Stats. 1963, p. 3107, in effect September 20, 1963, added in the first paragraph "from whom the excess amount was collected or by whom it was paid under this part, and the balance shall either be . . . or, if authorized by the board, deducted by the person from any amounts to become due from him under this part," and in the second paragraph substituted "two hundred fifty" for "one hundred" dollars. Stats. 1965, p. 2053, in effect September 17, 1965, substituted "one thousand dollars (\$1,000)" for "two hundred fifty dollars (\$250)." Stats. 1977, Ch. 921, operative January 1, 1978, substituted "five thousand dollars (\$5,000)" for "one thousand dollars (\$1,000)" in the second paragraph. Stats. 1985, Ch. 591, effective January 1, 1986, substituted "fifteen thousand dollars (\$15,000)" for "five thousand dollars (\$5,000)" in the second paragraph. Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted "fifty thousand dollars (\$50,000)" for "fifteen thousand dollars (\$15,000)" following "an

amount not exceeding" and added "or her" following "his" in the second paragraph. Stats. 1991, Ch. 770, in effect January 1, 1992, added "or wholesaler" after "vendor" in the third paragraph. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted "to the State Board of Control" after "records and certify"; substituted "The" for "If the State Board of Control approves, the" at the beginning of the second sentence; added "or her" after "or his" and "due from him" in the second sentence; deleted the second paragraph which read: "In the case, however, of a determination by the board that an amount not exceeding fifty thousand dollars (\$50,000) was not required to be paid under this part, the board without obtaining the approval of the State Board of Control may credit the amount on any amount then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors." Stats. 1994, Ch. 912, in effect September 28, 1994, but operative July 1, 1995, deleted "or wholesaler" after "to a vendor" in the second paragraph, and added "For any amount . . . of the determination" as the third paragraph.

**9151.5. Excess tax reimbursement.** When an amount represented by a person who is a taxpayer under this part to a customer as constituting reimbursement for taxes due under this part is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not taxable or is in excess of the taxable amount, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

**9152. Claims; limitation period.** (a) Except as provided in subdivision (b) no refund shall be approved by the board after three years from the last day of the month following the reporting period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 8776), Article 3 (commencing with Section 8801), or Article 4 (commencing with Section 8826) of Chapter 4, after six months from the date the determinations became final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period unless a claim for credit is filed with the board within that period or unless the claim relates to a period for which a waiver has been given pursuant to Section 8783.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 8783 if a claim therefor is filed with the board before the expiration of the period agreed upon.

History.—Stats. 1957, p. 3774, in effect September 11, 1957, completely revised this section. Stats. 1965, p. 4441, in effect September 17, 1965, revised section to provide for refund under certain circumstances. Stats. 1967, p. 1381, operative December 1, 1967, substituted "last" for "25th" day. Stats. 1983, Ch. 1102, in effect September 27, 1983, operative November 1, 1983, substituted "25th" for "last" before "day" in the first sentence of subdivision (a). Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "last day of the month following the reporting period" for "25th day of the month following the month" after "years from the", substituted "(commencing with Section . . . of Chapter 4" for "3 or 4 of Chapter 4 of this part" after "under Article 2", deleted "the" after "whichever period expires", and substituted "that" for "such" after "the board within" in the first sentence of, and substituted "that" for "such" after "the expiration of" and after "the board within" in the second sentence of, subdivision (a).

**9152.1. Claim limitation; financially disabled.** (a) The limitation period specified in Section 9152 shall be suspended during any period of a person's life that the person is financially disabled.



(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

*History.—Added by Stats. 2000, Ch. 1052, in effect January 1, 2001.*

**9152.2. Overpayments from levies or liens.** Notwithstanding Section 9152, a refund of an overpayment of any tax, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

*History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.*

**9153. Claims; form and content.** The claim shall be in writing and shall state the specific grounds upon which it is founded.

**9154. Credit for overpayments not exceeding fifty thousand dollars.** [Repealed by Stats. 1996, Ch. 1087, in effect January 1, 1997.]

**9155. Interest on overpayment.** Interest shall be paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5 from the first day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the person making the overpayment with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is the earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

*History.—Added by Stats. 1963, p. 4383, in effect September 20, 1963. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "1 percent" for "one-half of 1 percent." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . month" before "from" in the first sentence. Stats. 1983, Ch. 1102, in effect September 27, 1983, operative November 1, 1983, substituted "25th" for "last" before "day" in the first sentence of the first paragraph and in subdivision (a). Stats. 1984, Ch. 1020, effective January 1,*

1985, operative July 1, 1985, substituted "modified . . . per month" for "adjusted annual rate" before "established" in first paragraph, substituted "he or she" for "he" in (a). Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted "26th" for "25th" after "from the", substituted "during" for "for" after "period", and substituted ". In addition, a" for "; but no" in the first sentence; and added "as follows" after "paid" in the second paragraph. Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "first day of the calendar" for "26th day of the" after "6591.5 from the" in the first paragraph; and substituted "last day of the calendar" for "25th day of the" after "refund, to the" in subdivision (a).

**9156. Intentional or careless overpayment.** (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

**History.**—Added by Stats. 1963, p. 4384, in effect September 20, 1963. Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation "(a)" and added subdivision (b).

**9157. Systems meeting emission standards.** [Repealed by Stats. 1977, Ch. 579, effective January 1, 1978.]

## Article 2. Suit for Refund

- § 9171. Injunction forbidden.
- § 9172. Necessity for refund claim.
- § 9173. Action for refund; limitation.
- § 9173.5. When refund claim not acted upon.
- § 9173.6. Failure to bring timely suit.
- § 9174. Credit or refund; interest.
- § 9175. Judgment for assignee forbidden.

**9171. Injunction forbidden.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this State or against any officer of the State to prevent or enjoin the collection under this part of any excise tax or other amounts required to be collected or to prevent or enjoin the revocation of any permit issued under this part or any other action whereby it is sought to enforce the payment of any excise tax or other amounts required to be paid.

**9172. Necessity for refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

**History.**—Stats. 1957, p. 3775, in effect September 11, 1957, completely revised this section which previously had provided for a suit in Sacramento County after payment.

**9173. Action for refund; limitation.** Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

**History.**—Stats. 1949, p. 1342, in effect October 1, 1949, revised wording without substantive change. Stats. 1957, p. 3775, in effect September 11, 1957, completely revised this section which previously contained a limitation period of one year.

**9173.5. When refund claim not acted upon.** If the board fails to mail notice of action on a claim within six months after the claim is filed, the

claimant may, prior to the mailing of notice by the board, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for recovery of the whole or any part of the amount claimed as an overpayment.

*History.*—Added by Stats. 1957, p. 3775, in effect September 11, 1957.

**9173.6. Failure to bring timely suit.** Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the State on account of any alleged overpayments.

*History.*—Added by Stats. 1957, p. 3775, in effect September 11, 1957.

**9174. Credit or refund; interest.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any amounts due from the plaintiff under this part, Part 2 (commencing with Section 7301), and Part 31 (commencing with Section 60001), and the balance of the judgment shall be refunded to the plaintiff. In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5 upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

*History.*—Stats. 1943, p. 2002, in effect August 4, 1943, added “and Part 2 of Division 2 of this code.” Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “12 percent” for “6 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “(commencing . . . division)” for “of Division . . . code” after “Part 2” in the first sentence, and substituted “adjusted . . . 19269” for “rate . . . annum” before “upon” in the second sentence. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, deleted “of this division” after “Section 7301),” substituted “modified . . . per annum” for “adjusted annual rate” before “established,” substituted “Section 6591.5” for “Section 19269.” Stats. 1995, Ch. 555, in effect January 1, 1996, added a comma after “under this part” and added “Part 31 (commencing with Section 60001), and” after “Section 7301), and” in the first sentence.

**9175. Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any amount paid when the action is brought by or in the name of an assignee of the user.

## Article 2.5. Recovery of Erroneous Refunds

- § 9181. Erroneous refunds; action.
- § 9182. Place of trial.
- § 9183. Rules of procedure, etc.
- § 9184. Interest on erroneous refunds.

**9181. Erroneous refunds; action.** (a) The board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 8776) or Article 4 (commencing with Section 8826) of Chapter 4. Except in the case of fraud, the deficiency

determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

**History.**—Added by Stats. 1957, p. 3775, in effect September 11, 1957. Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, added subdivision designation "(a)", substituted "that" for "which" after "or part thereof" in subdivision (a), and added subdivision (b).

**Note.**—SEC. 61. of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

**9182. Place of trial.** In any action brought pursuant to subdivision (a) of Section 9181, the court may, with the consent of the Attorney General, order a change in the place of trial.

**History.**—Added by Stats. 1957, p. 3775, in effect September 11, 1957. Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "In any action . . . change in the" for "The action shall be tried in the County of Sacramento unless the court, with the consent of the Attorney General orders a change of".

**9183. Rules of procedure, etc.** The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 9181, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials and appeals shall apply to the proceedings.

**History.**—Added by Stats 1957, p. 3775, in effect September 11, 1957. Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "any action brought . . . of Section 9181," for "the action" after "General shall prosecute" and substituted "shall apply" for "are applicable" after "trials and appeals".

**9184. Interest on erroneous refunds.** (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 9181, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 9181 on or after January 1, 2000.

**History.**—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

### Article 3. Cancellations

#### § 9196. Cancellation of determination; procedure.

**9196. Cancellation of determination; procedure.** If any amount has been illegally determined either by the person filing the return or by the board, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

**History.**—Stats. 1959, p. 4379, in effect September 18, 1959, completely revised the section which previously had required certification to the State Board of Control irrespective of the amount. Stats. 1963, p. 3108, in effect September 20, 1963, added "set forth that fact in its records and" in the first sentence, and changed "one hundred" to "two hundred fifty" dollars in the first and last sentences. Stats. 1965, p. 2054, in effect September 17, 1965, substituted "one thousand dollars (\$1,000)" for "two hundred fifty dollars (\$250)" in the first and last sentences. Stats. 1984, Ch. 1707, effective January 1, 1985, substituted "five thousand dollars (\$5,000)" for each "one thousand dollars (\$1,000)" reference. Stats.

1985, Ch. 591, effective January 1, 1986, substituted "fifteen thousand dollars (\$15,000)" for "five thousand dollars (\$5,000)" after "in excess of" and "fifteen thousand dollars (\$15,000)" for "five thousand dollars (\$5,000)" after "not exceeding." Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted "fifty thousand dollars (\$50,000)" for "fifteen thousand dollars (\$15,000)" before "has been illegally determined" in the first and last sentences. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted "in excess of fifty thousand dollars (\$50,000)" after "If any amount"; substituted a comma for "and" after "in its records"; deleted "to the State Board of Control" after "certify"; substituted ", and" for ". If the State Board of Control approves, it shall" after "determination was made"; and substituted "Any proposed determination . . . of that determination" for "If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined either by the person filing a return or by the board the board without certifying this fact to the State Board of Control shall authorize the cancellation of the amount upon the records of the board."

## CHAPTER 7. ADMINISTRATION

Article 1. Administration. §§ 9251-9258.

2. The California Taxpayers' Bill of Rights. §§ 9260-9278.

Uncodified Sections

§ 1. Multiagency task force.

### Article 1. Administration.

- § 9251. Duty and authority of board.
- § 9252. Administrative assistants.
- § 9253. Records of users and every person dealing in fuel.
- § 9254. Examination of records by board.
- § 9255. Information confidential; divulging forbidden.
- § 9255.1. Furnishing of information to state and federal agencies.
- § 9255.2. Information confidential; tax preparer.
- § 9256. Cooperation of Motor Vehicle Department.
- § 9257. Certificate of notice.
- § 9258. Notification to Board.

**9251. Duty and authority of board.** The board shall enforce the provisions of this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

**9252. Administrative assistants.** The board may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of this part.

**9253. Records of users and every person dealing in fuel.** Every user and every person dealing in, transporting, or storing fuel in this State shall keep such records, receipts, invoices, and other pertinent papers with respect thereto in such form as the board may require.

**9254. Examination of records by board.** The board or its authorized representative may examine the books, papers, records, and equipment of any user or person dealing in, transporting, or storing fuel and may investigate the character of the disposition which the user or person makes of the fuel in order to ascertain whether all excise taxes due under this part are being properly reported and paid.

**9255. Information confidential; divulging forbidden.** It is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any user visited or examined in the discharge of official duty, or the amount or

source of income, profits, losses, expenditures, or any particular thereof set forth or disclosed in any return, or to permit any return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except to another government, state agency or federal agency as specified in Section 9255.1. Information respecting the tax due from a user may be furnished, however, to any person owning or having an interest in a motor vehicle subject to the lien of the tax. The Governor may, by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person of the records maintained by the board under this part. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public. Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest and penalties.

Any violation of this section is a misdemeanor and is punishable by a fine not exceeding one thousand dollars (\$1,000), by imprisonment not exceeding one year, or by both that fine and imprisonment, in the discretion of the court.

History.—Stats. 1947, p. 1848, in effect September 19, 1947, added second sentence. Stats. 1953, p. 3599, in effect September 9, 1953, amended third sentence by deleting “of the reports” after “examination” and adding “of the records maintained by the board under this part”; added the present fourth sentence of first paragraph. Stats. 1957, p. 3775, in effect September 11, 1957, added last sentence to first paragraph. Stats. 1963, p. 1437, in effect September 20, 1963, substituted “return” for “report” in the first sentence. Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added “except to another . . . in Section 9255.1” after “by any person” in the first sentence of the first paragraph and added “that fine and imprisonment,” after “or by both” in the second paragraph.

**9255.1. Furnishing of information to state and federal agencies.** (a) Upon request from the officials to whom is entrusted the enforcement of the motor fuel tax laws of another government, the board may furnish to those officials any information in the possession of the board that is deemed essential to the enforcement of the motor fuel tax laws. Any information so furnished shall not be used for any purpose other than that for which it was furnished.

(b) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to motor fuels any motor fuel information in the possession of the board that is deemed necessary for the enforcement of those laws.

(c) The board may furnish any interstate user information obtained by the board under this part to any state or federal agency for use by that agency in the enforcement of interstate user registration or licensing laws, or interstate vehicle registration or licensing laws.

History.—Added by Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998. Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, added subdivision (c).

**9255.2. Information confidential; tax preparer.** (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 4 (commencing with Section 8751), or any person who for compensation prepares any such return for any other person, and who



knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

*History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.*

**9256. Cooperation of Motor Vehicle Department.** Before registering any motor vehicle, the Department of Motor Vehicles shall ascertain from the applicant for registration whether or not the motor vehicle sought to be registered is propelled by a fuel the use of which is subject to the excise tax imposed under this part. If the motor vehicle is propelled by the use of such a fuel, the department shall notify the board.

**9257. Certificate of notice.** A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

*History.—Added by Stats. 1974, Ch. 610, effective January 1, 1975.*

**9258. Notification to Board.** On or after January 1, 1976, any person who equips a vehicle with a system using liquefied petroleum gas, compressed natural gas or liquid natural gas to propel the vehicle, or who transfers any vehicle so equipped shall notify the board within 10 days after so equipping or transferring the vehicle.

*History.—Added by Stats. 1975, Ch. 807, operative January 1, 1976.*

## Article 2. The California Taxpayers' Bill of Rights \*

- § 9260. Administration.
- § 9261. Taxpayers' Rights Advocate.
- § 9262. Education and information program.
- § 9263. Annual hearing with taxpayers.
- § 9264. Preparation of statements by board.
- § 9265. Limit on revenue collected or assessed.
- § 9266. Evaluation of employees' contact with taxpayers.
- § 9267. Plan to timely resolve claims and petitions.
- § 9268. Procedures relating to protest hearings.
- § 9269. Reimbursement to taxpayer.
- § 9270. Investigations for nontax administration purposes.

\* Article 2 was added by Stats. 1992, Ch. 438, in effect January 1, 1993.

- § 9271. Settlement of disputed tax liabilities. [Repealed.]
- § 9271. Settlement authority.
- § 9272. Release of levy.
- § 9272.1. Return of property.
- § 9273. Exemptions from levy.
- § 9274. Claim for reimbursement of bank charges by taxpayer.
- § 9275. Preliminary notice to taxpayers prior to lien.
- § 9276. Notice preliminary to lien.
- § 9277. Disregard by board employee or officer.
- § 9278. Offers in compromise.

9260. **Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

9261. **Taxpayers' Rights Advocate.** (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

9262. **Education and information program.** (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added "and compliance" after "program for audit" in paragraph (4) of subdivision (b).

9263. **Annual hearing with taxpayers.** The board shall conduct an annual hearing before the full board where industry representatives and



individual taxpayers are allowed to present their proposals on changes to the Use Fuel Tax Law which may further improve voluntary compliance and the relationship between taxpayers and government.

**9264. Preparation of statements by board.** The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

**9265. Limit on revenue collected or assessed.** (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

**9266. Evaluation of employee's contact with taxpayers.** The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

**9267. Plan to timely resolve claims and petitions.** The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

**9268. Procedures relating to protest hearings.** Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

(b) The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

**9269. Reimbursement to taxpayer.** (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

*History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “board” for “State Board of Control” after “expenses with the” in paragraph (1) of, substituted “decides” for “makes a recommendation to the State Board of Control” after “The board” in paragraph (3) of, and deleted paragraph (4) which read: “The State Board of Control concurs with the recommendation and orders the board to provide reimbursement of fees and expenses to the taxpayer.” from, subdivision (a); and added subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year . . . board becomes final” after “with the board” in paragraph (1) of, and substituted “in an amount . . . its sole discretion” for “which shall be determined by the board” after “to the hearing” in paragraph (3) of subdivision (a), substituted “board staff has . . . substantially justified” for “taxpayer has established that the position of the board staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, substituted “the notice of determination, jeopardy determination, or claim” for “filing petitions for redetermination and claims” after “incurred after the date” in subdivision (c) paragraph (1).*

**9270. Investigations for nontax administration purposes.** (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) This section is not intended to prohibit, restrict, or prevent the exchange of information if the person is being investigated for multiple violations that include use fuel tax violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

History.— Stats. 2006, Ch. 538 (SB 1852), in effect January 1, 2007, substituted "any" for "and" after "or surveillance over," in subdivision (a); and substituted "This" for "The provisions of this" before "section is not intended", substituted "is" for "are" after "This section", substituted "if" for "where" after "exchange of information", and substituted "that" for "which" after "multiple violations" in subdivision (d).

**9271. Settlement of disputed tax liabilities.** [Repealed by Stats. 1995, Ch. 497, in effect January 1, 1996.]

**9271. Settlement authority.** (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil tax matter in dispute involving a reduction of tax or penalties in settlement, the total of which reduction of tax and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of tax, or penalties, or total tax and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of

the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the taxpayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential tax information for purposes of Section 9255.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any

determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

**History.**—Stats. 1995, Ch. 497, in effect January 1, 1996. Stats. 2003, Ch. 605 (SB 1060), effective January 1, 2004, added “, for at least one year,” after “there shall be placed on file” in the first sentence of subdivision (c). Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, substituted “Except as provided in paragraph (3) and subject” for “Subject” before “to paragraph (2)” in paragraph (1) of, added “, itself,” after “submitted to the board” in the first and third sentences of paragraph (2) of, and added paragraph (3) to subdivision (b); added “, or penalties, or total tax and penalties” after “a reduction of tax” in the first paragraph of and substituted “For any settlement approved by the board, itself, the” for “The” before “Attorney General’s conclusion” in the first sentence of paragraph (5) of subdivision (c); added “, itself,” after “disapproved by the board” in the second sentence of subdivision (e)(1); and added “considered or” after “any settlement” in the second sentence of subdivision (g).

**9272. Release of levy.** (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers’ Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer of his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

**History.**—Stats. 1993, Ch. 589 in effect January 1, 1994, added “of Division 2” before “of Title 9” and added “of Part 2” before “of the Code” to subdivision (b). Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “that the” for “of any of the following: (1) The” after “in the event” in subdivision (a); substituted subdivision letter “(b)” for paragraph number “(2)” and substituted “may order the release of any” for “orders the release of the” after “Taxpayers’ Rights Advocate” in, and added “issued pursuant to . . . of moneys received,” after “notice to withhold” in, subdivision (b); and relettered former subdivisions (b) and (c) as (c) and (d), respectively.

**9272.1. Return of property.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 9033 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 9274.

**History.**—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

**9273. Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the

Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” before “of Title 9” and added “of Part 2” before “of the Code”.

**9274. Claim for reimbursement of bank charges by taxpayer.** (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer’s position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

History.—Stats. 2001, Ch. 543 (SB 1185), in effect January 1, 2002, added “and any other reasonable third-party check charge fees” after “reimbursement of bank charges” in the first sentence of, added “and third party” after “Bank” and added “or third party’s” after “financial institution’s” in the second sentence of, and added “or third party” after “financial institution” in the third sentence of, subdivision (a).

**9275. Preliminary notice to taxpayers prior to lien.** (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 8826) of Chapter 4.



(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added subdivision (e).

**9276. Notice preliminary to lien.** For the purposes of this part only, the board shall not revoke or suspend a person's permit pursuant to Section 8704 or 8714 unless the board has mailed a notice preliminary to revocation or suspension that indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

History.—Stats 1993, Ch. 589, in effect January 1, 1994, substituted "permit" for "license" after "a person's" in the first sentence.

**9277. Disregard by board employee or officer.** (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

**9278. Offers in compromise.** (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final tax liability" means any final tax liability arising under Part 3 (commencing with Section 8601), or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the taxpayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income.

(B) The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.



(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the taxpayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the taxpayer.

(g) When more than one taxpayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable taxpayer shall not relieve the other taxpayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state. The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or violate the confidentiality provisions of Section 9255. No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(k) For purposes of this section, “person” means the taxpayer, any member of the taxpayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or that owns or controls the taxpayer, directly or indirectly.

History.—Added by Stats. 2002, Ch. 152 (AB 1458), in effect January 1, 2003. Stats. 2006, Ch. 347 (AB 2367), in effect January 1, 2007, substituted “in the state prison” for “not more than three years” after “fifty thousand dollars (\$50,000) or imprisoned” in the first paragraph of subdivision (j).

## Uncodified Sections

### § 1. Multiagency task force.

1. **Multiagency task force.** (a) The multiagency task force established pursuant to Executive Order D-51-86 (hereinafter referred to as “task force”) shall include among its goals and objectives the following:

(1) To deter tax evasion by maximizing recoveries from blatant tax evaders and violators of cash-pay reporting laws, utilizing all penalties which are available to the taxing and enforcement agencies under existing law.

(2) To reduce enforcement costs by eliminating duplicative audits and investigations.

(3) To generate greater voluntary taxpayer compliance and to deter tax and cash-pay violations by publicizing the efforts of the task force.

(4) To provide opportunities for auditors and investigators from tax and enforcement agencies to become familiar with other agencies’ laws and enforcement procedures.

(5) To concentrate its efforts in investigating and prosecuting violations of cash-pay and tax laws by employers with five or more employees and by individuals who are habitual or willfull violators of those laws.

(b) In addition to the responsibilities cited in Executive Order D-51-86, the task force shall be empowered to do all of the following:

(1) Identify areas of blatant violations and noncompliance with tax and cash-pay laws.

(2) Solicit referrals from the tax and enforcement agencies represented on the task force committee of instances of blatant violations and noncompliance with tax and cash-pay laws.

(3) Conduct audits, investigations, and referrals for prosecution of violations referred by other agencies and in the identified areas of violations and noncompliance, using all enforcement powers available in existing laws and regulations.

(4) Establish an advertised telephone “hotline” for referrals from the public.

(5) Publicize the activities of the task force.

(6) Keep the audit and investigative staff of the tax and enforcement agencies represented on the task force committee fully informed of the activities of the task force.

(7) Develop procedures for improved information sharing among the agencies represented on the task force committee, consistent with restrictions on disclosure of confidential tax information in existing law, for the purpose of improving enforcement.

(8) Based on the activities of the task force, evaluate the need for any law changes to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve agencies’ ability to audit, investigate, and prosecute tax and cash-pay violations.

(C) Deter violations and improve voluntary compliance.

(D) Eliminate duplication and improve cooperation among the participating agencies.

(c) The task force shall report to the Governor, the Senate and Assembly Revenue and Taxation Committees, and the Commission on California State Government Organization and Economy every six months during the period it is in existence, beginning on March 1, 1987, regarding the activities of the task force. The reports shall include, but not be limited to, all of the following:

(1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited or investigated, and referred for prosecution.

(2) Actions taken by the task force to publicize its activities.

(3) Efforts made by the task force to establish an advertised telephone “hotline” for referrals from the public.

(4) Procedures developed for improved information sharing among the agencies represented on the task force.

(5) Steps taken by the task force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

(6) Recommendations for any law changes needed to accomplish the goals described in paragraph (8) of subdivision (b)

CHAPTER 8. DISTRIBUTION OF PROCEEDS

- § 9301. Motor Vehicle Fuel Fund; transmittal.
- § 9302. Disposition of fund; appropriations.
- § 9303. Transfer of fund to Highway Users Tax Fund.
- § 9304. Time of transfer.

**9301. Motor Vehicle Fuel Fund; transmittal.** The board shall transmit all money received by it under this part, except the amounts of overpayments of the fees required by Section 8707 and 8714 of this part, to the State Treasurer to be deposited in the State Treasury to the credit of the Motor Vehicle Fuel Account in the Transportation Tax Fund. The board shall at the same time furnish copies of the schedules covering the transmittals to the Controller.

*History.*—Stats. 1959, p. 2427, in effect September 18, 1959, added “except the amounts of overpayments of the fees required by Sections 8707 and 8714 of this part.” Stats. 1974, Ch. 544, effective January 1, 1975, amends the section to require the deposit to the credit of the Motor Vehicle Fuel Account in the Transportation Tax Fund rather than to the credit of the Motor Vehicle Fuel Fund.

**9302. Disposition of fund; appropriations.** All money deposited in the fund under this part is hereby appropriated as follows:

(a) To pay the refunds authorized in this part.

(b) To the Highway Users Tax Account in the Transportation Tax Fund as provided in this chapter.

*History.*—Stats. 1947 (First Extra Session), p. 3806, operative January 1, 1948, substituted “Highway Users Tax Fund” for “State Highway Fund.” Stats. 1974, Ch. 544, effective January 1, 1974, substituted the present language for “to the Highway Users Tax Fund as provided in this chapter.”

**9303. Transfer of fund to Highway Users Tax Fund.** The Controller shall transfer the balance of all money deposited in the Motor Vehicle Fuel Account in the Transportation Tax Fund under this part, after the payment of refunds, to the Highway Users Tax Account in the Transportation Tax Fund.

*History.*—Stats. 1947 (First Extra Session), p. 3807, operative January 1, 1948, substituted “Highway Users Tax Fund” for “State Highway Fund” and deleted provision providing for expenditure of the tax revenues for the repair or replacement of posted bridges. Stats. 1974, Ch. 544, effective January 1, 1974, substituted “Motor Vehicle Fuel Account in the Transportation Tax Fund” for “Motor Vehicle Fuel Fund”, and substituted “Highway Users Tax Account in the Transportation Tax Fund” for “Highway Users Tax Fund”.

**9304. Time of transfer.** The Controller shall make the transfers at the same time as the transfers to the Highway Users Tax Account in the Transportation Tax Fund of moneys received under the Motor Vehicle Fuel License Tax Law are made.

*History.*—Stats. 1947 (First Extra Session), p. 3807, operative January 1, 1948, substituted “Highway Users Tax Fund” for “State Highway Fund.” Stats. 1974, Ch. 544, effective January 1, 1974, substituted “Highway Users Tax Account in the Transportation Tax Fund” for “Highway Users Tax Fund”.

CHAPTER 9. VIOLATIONS

- § 9351. Violations; misdemeanor.
- § 9352. Failure to file return; penalty.
- § 9353. False or fraudulent return; penalty.
- § 9354. Other violations.
- § 9354.5. Felony offense.
- § 9355. Limitation period.

**9351. Violations; misdemeanor.** Any person who places or causes to be placed fuel into a receptacle on a motor vehicle from which receptacle fuel is supplied for the propulsion of the vehicle, or who acquires fuel outside this

state and uses the fuel for the propulsion of a motor vehicle within this state, is guilty of a misdemeanor unless that person is a vendor and collects the tax as provided under Section 8732 or 8736 or that person is a user who holds a valid use fuel tax permit, or is excluded from that requirement under Section 8608, and uses the fuel placed in the receptacle. He or she shall be fined for each offense not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000), or be imprisoned for not exceeding six months in the county jail, or be subject to both fine and imprisonment in the discretion of the court.

**History.**—Stats. 1953, p. 3599, in effect September 9, 1953, substituted “any” for “a” before “motor vehicle” and added “or the tax is collected from the user pursuant to Section 8732.” Stats. 1957, p. 3228, in effect September 11, 1957, operative October 1, 1957, substituted the present “unless” clause for “unless a valid use fuel tax permit is held by the operator of the vehicle or the tax is collected from the user pursuant to Section 8732.” Stats. 1963, p. 4383, in effect September 20, 1963, substituted the words “and has complied with the provisions of Section 8732” for “collects the tax as provided under Section 8732.” Stats. 1968, p. 2140, in effect November 13, 1968, reworded the first sentence, substituting “a receptacle” for “any receptacle” and adding “or who acquires fuel outside this state and uses the fuel for the propulsion of a motor vehicle within this state” and “or is excluded from that requirement under the provisions of Section 8608 of this part”; and added the second sentence. Stats. 1983, Ch. 1092, in effect September 27, 1983, operative January 1, 1984, substituted “one thousand dollars (\$1,000)” for “five hundred dollars (\$500)” after “more than” in the second sentence. Stats. 1991, Ch. 770, in effect January 1, 1992, added “or wholesaler” after “vendor” and “or 8736” after “8732” in the first sentence, and added “or she” after “He” in the second sentence. Stats. 1994, Ch. 912, in effect September 28, 1994, but operative July 1, 1995, substituted “that” for “such” after “a misdemeanor unless” and “or 8736”; deleted “or wholesaler” after “is a vendor”; substituted “Section 8608” for “the provisions of Section 8608 of this part” after “that requirement under” in the first sentence.

**9352. Failure to file return; penalty.** Any person who fails or refuses to file any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the board is guilty of a misdemeanor and subject to a fine of not exceeding one thousand dollars (\$1,000) for each offense.

**History.**—Stats. 1953, p. 3600, in effect September 9, 1953, substituted “person” for “user.” Stats. 1957, p. 3776, in effect September 11, 1957, deleted “or who renders a false or fraudulent return” following “board.” Stats. 1963, p. 1438, in effect September 20, 1963, substituted “return” for “report.” Stats. 1983, Ch. 1092, in effect September 27, 1983, operative January 1, 1984, substituted “one thousand dollars (\$1,000)” for “five hundred dollars (\$500)” after “exceeding.”

**9353. False or fraudulent return; penalty.** Any person required to make, render, sign, or verify any return who makes any false or fraudulent return with intent to defeat or evade the determination required by law to be made is guilty of a misdemeanor. He shall for each offense be fined not less than three hundred dollars (\$300) and not more than five thousand dollars (\$5,000), or be imprisoned for not exceeding one year in the county jail, or be subject to both fine and imprisonment in the discretion of the court.

**History.**—Stats. 1963, p. 1438, in effect September 20, 1963, substituted “return” for “report.”

**9354. Other violations.** Any violation of the provisions of this part, except as otherwise provided, is a misdemeanor and is punishable as such.

**9354.5. Felony offense.** Notwithstanding any other provision of this part, any person who violates this part with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars (\$25,000) or more in any 12-consecutive-month period. The determination shall be approved by the executive director or his or her designee. Each offense shall be punished by a fine of not less than five thousand dollars (\$5,000) and not more than twenty thousand dollars

(\$20,000), or imprisonment for 16 months, two years, or three years, or by both the fine and imprisonment in the discretion of the court.

**History.**—Added by Stats. 1987, Ch. 1064, effective January 1, 1988. Stats. 1989, Ch. 654, in effect January 1, 1990, substituted “Deputy Director, Business Taxes,” for “administrator of the excise taxes”, and “designee” for “supervisor” in the second sentence. Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “who violates this part” for “violation of this part by any” after “this part, any” in the first sentence, substituted “executive director or his or her” for “Deputy Director, Business Taxes, or that person’s” after “approved by the” in the second sentence, and added “by” after “three years, or” in the third sentence.

**9355. Limitation period.** Any prosecution for violation of any of the penal provisions of this part shall be instituted within three years after the commission of the offense, or within two years after the violation is discovered, whichever is later.

**History.**—Added by Stats. 1957, p. 3776, in effect September 11, 1957. Stats. 1986, Ch. 1361, effective January 1, 1987, added, “, or within two years after the violation is discovered, whichever is later.”

**Note.**—Sec 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out.)

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

## FUEL TAX AGREEMENTS

(Part 3.5, Division 2, Revenue and Taxation Code)

(As added by Stats. 1989, Ch. 411, in effect January 1, 1990.)

- Chapter 1. Fuel Tax Agreements. § 9401.  
2. The International Fuel Tax Agreement. §§ 9405-9433.

## CHAPTER 1. FUEL TAX AGREEMENTS

**9401. Authorization.** The board, with the approval of the Department of Finance, may on behalf of the state become a party to a reciprocal fuel tax agreement between this state and another jurisdiction, or an agency thereof that is authorized to enter into an agreement, providing for the administration, collection, and enforcement by a party to the agreement of the taxes imposed upon motor fuels by another jurisdiction, and for the forwarding of collections to the jurisdiction on behalf of which the tax was collected.

For purposes of this section, “taxes imposed upon motor fuels” means the taxes imposed by this state pursuant to Part 3 (commencing with Section 8601) or Part 31 (commencing with Section 60001), and taxes of a similar nature imposed upon any motor fuels by another jurisdiction under its laws.

For purposes of this section, a “jurisdiction” is this state, any other state, the District of Columbia, a province or territory of Canada, or any governmental entity, which is a party to a reciprocal fuel tax agreement authorized by this section.

The board may adopt and enforce regulations necessary to implement the terms of a reciprocal fuel tax agreement to which the board is a party.

**History.**—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “that” for “which” after “an agency thereof”, deleted “such” after “to enter into”, deleted “fuel” after “agreement of the”, and added “upon motor fuels” after “the taxes imposed”, in the first paragraph; substituted “taxes imposed upon motor fuels” for “fuel taxes”, substituted “taxes” for “tax” after “means the”, substituted “3 (commencing with . . . Section 60001)” for “2 (commencing with Section 7301) or Part 3 (commencing with Section 8601)” after “pursuant to Part”, and substituted “upon any motor . . . under its laws” for “by another jurisdiction” after “similar nature imposed”, in the second paragraph; and deleted “or” after “District of Columbia” and added “or any government entity,” after “territory of Canada,” in the third paragraph.

## CHAPTER 2. THE INTERNATIONAL FUEL TAX AGREEMENT \*

- Article 1. Construction. §§ 9405-9407.  
2. Definitions. §§ 9410-9411.  
3. Annual Fees. § 9420.  
4. Administration. § 9425.  
5. IFTA Disclosure. § 9430.  
6. Distribution of Proceeds. §§ 9432-9433.

## Article 1. Construction

- § 9405. Construction.  
§ 9407. Limits of authority.

**9405. Construction.** This chapter shall be administered in conjunction with the IFTA, the Use Fuel Tax Law (Part 3 (commencing with Section 8601)), and the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001)). Whenever the Use Fuel Tax Law or the Diesel Fuel Tax Law is

\* Added by Stats. 1995, Ch. 555, in effect January 1, 1996.



inconsistent with the IFTA or this chapter, the IFTA Agreement or this chapter shall prevail except where prohibited by the California Constitution or United States Constitution.

History.—Stats. 2004, Ch. 183 (AB 3082) in effect January 1, 2005, added “Section” after “(Part 31 (commencing with” in the first sentence, and added “Constitution” after “by the California” in the second sentence. Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, deleted “Articles of Agreement” after “IFTA” throughout section.

**9407. Limits of authority.** (a) The IFTA, for the purposes of this chapter, may be used to:

(1) Determine the base state jurisdiction for motor carriers engaged in interstate commerce.

(2) Impose recordkeeping requirements.

(3) Specify audit procedures.

(4) Establish procedures for the exchange of information.

(5) Identify interstate motor carriers.

(6) Define motor vehicles and fuels subject to the provisions of the agreement.

(7) Determine bond requirements.

(8) Specify reporting requirements, due dates of returns, interest and penalty rates, and provisions for failure to file returns.

(9) Specify methods for collection of taxes, interest, and penalties.

(10) Determine methods for the distribution of taxes and interest collected or assessed to the appropriate jurisdictions.

(11) Deny, suspend, or cancel benefits under the agreement to any interstate motor carrier who violates the provisions of the agreement.

(b) The board may adopt regulations to administer the provisions of this chapter.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, substituted “IFTA” for “International Fuel Tax Agreement” after “The” in subdivision (a).

## Article 2. Definitions

§ 9410. “Contractor.”

§ 9411. “IFTA.”

**9410. “Contractor.”** “Contractor” includes a subcontractor.

**9411. “IFTA.”** “IFTA” means the International Fuel Tax Agreement. The International Fuel Tax Agreement consists of the Articles of Agreement, the Procedures Manual, the Audit Manual, as amended from time to time.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, added the second sentence which provided “The International Fuel Tax Agreement consists of the Articles of Agreement, the Procedures Manual, the Audit Manual, as amended from time to time.”

## Article 3. Annual Fees

§ 9420. License and fee.

**9420. License and fee.** Except for trip permits as provided in Sections 8708 and 60122, all interstate users who choose to obtain an IFTA license from the board shall apply for a license and secure decals for their vehicles. Application for the license and decals shall be made annually on forms prescribed by the board. The application shall be under oath and shall contain

that information as the board deems necessary. Upon receipt of the application, and upon payment of any required reinstatement fee, the board may issue to the applicant a license and decals.

The decals issued to the interstate user shall be placed on both exterior sides of the vehicle cab. Failure to display the decals in the required location may subject the interstate user to the purchase of a trip permit. The transfer of decals from one interstate user to another interstate user is prohibited. All decals shall remain the property of the state and may be recalled for any violation of the provisions of the IFTA.

A fee to be determined by the board shall be charged for the annual license and a set of two decals issued prior to and during the calendar year that the license and decal is valid. The board may also prescribe procedures and set a fee for the issuance of a 30-day IFTA temporary license or replacement decals.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, substituted “license” for “permit” after “who choose to obtain an IFTA” in the first sentence of the first paragraph and deleted “Articles of Agreement” after “violation of the provisions of the IFTA” in the last sentence of the second paragraph.

#### Article 4. Administration

##### § 9425. Returns and refunds.

**9425. Returns and refunds.** The exemptions in Chapter 2 (commencing with Section 8651) of Part 3 do not apply to IFTA-required returns. However, the exempt use shall be refunded under the refund provisions in Chapter 6 (commencing with Section 9151) of Part 3.

#### Article 5. IFTA Disclosure

##### § 9430. Release of information.

**9430. Release of information.** (a) The board shall make available any and all information obtained under this chapter to any member jurisdiction of the IFTA, a designee of the member jurisdiction, or any contractor under contract with the board. The information obtained by the member jurisdiction, designee, or contractor shall not be made public except to the extent authorized by the agreement.

(b) The member jurisdictions of the IFTA and the board may utilize any information obtained pursuant to this chapter to develop data on international or interstate commerce, fuel consumption, and any aspect of motor fuel tax administration.

#### Article 6. Distribution of Proceeds

##### § 9432. Distribution of funds.

##### § 9433. Uses of funds.

**9432. Distribution of funds.** The board shall transmit all moneys received by it under this chapter to the Treasurer to be deposited in the State Treasury. The board in accordance with the Treasurer shall set up a reserve account in the State Treasury to disburse those moneys as needed. After distribution payments to other jurisdictions and refunds authorized by the

IFTA, the balance remaining in the reserve account shall be transferred, except as provided in Section 9433, to the Motor Vehicle Fuel Account in the Transportation Tax Fund.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, but operative January 1, 2006, deleted “Articles of Agreement” after “refunds authorized by the IFTA” in the third sentence.

**9433. Uses of funds.** The fees paid for licenses and decals issued under Section 9420 shall be deposited in a reserve account in the State Treasury and shall, upon appropriation by the Legislature, be used for administration of the IFTA program.

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USE FUEL TAX LAW